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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. 180/2024**

DR. ASHWINI JAIN

..... Petitioner

Through: Mr.Vivek Singh, Advocate.

versus

SMT. JAI MALA JAIN & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **31.05.2024**

CM APPL. 34399/2024

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 180/2024, CM APPL. 34398/2024

3. The petitioner, who is defendant in a suit instituted by the respondents/plaintiffs, has assailed the impugned order dated 24.04.2024 passed by the learned Additional District Judge -2, Shahdara District, whereby, his application under Order VII Rule 11 CPC has been dismissed.

4. No one is present for the respondents/plaintiffs despite advance notice.

5. It is borne out from the record that late Sh. U.C. Jain, the predecessor in interest of the respondents/plaintiffs had filed a suit bearing No. CS 2358/2016 against the present petitioner seeking declaration to the effect that he was the sole owner of the property in



question.

6. Shorn off unnecessary details, the present petitioner on 15.09.2017 before the High Court undertook to vacate the suit property on or before 31.01.2020, subject to the petitioner clearing all charges towards water, electricity, etc. However, he vacated the property only on 31.10.2020 pursuant to the order dated 10.09.2020 passed by this Court in Contempt **Case (C) 339/2020**.

7. Grievance of the petitioner is that subsequent suit instituted by the respondents/plaintiffs seeking *mesne* profits and damages for wrongful occupation of the premises from 01.02.2020 to 31.10.2020 is barred by under Order II Rule 2 CPC.

8. Having heard the learned counsel for the petitioner, the plea that the subsequent suit is bad for non-joinder of the causes of action in the earlier suit and thus barred under Order II Rule 2 CPC cannot be sustained in law. The learned trial court has rightly relied on the observations contained in paragraph (16) of the decision of the Supreme Court in the case of ***Shiv Kumar Sharma vs. Santosh Kumari : (2007) 10 SCR17*** wherein it was held that '*a suit for recovery of possession on declaration of one's title and/or injunction and a suit for mesne profits or damages may involve different cause of action. For a suit for possession, there may be one cause of action; and for claiming a decree for mesne profits, there may be another.*'

9. Accordingly, the present petition is dismissed without prejudice.

DHARMESH SHARMA, J.

MAY 31, 2024

pkv