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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 284/2024, CM APPL. 57760/2024, CM APPL. 57762/2024
MANSA RAM YADAV & ORS.

.....Petitioner

Through: Appearance not given.

versus

BRAHM PRAKASH YADAV & ANR.

.....Respondent

Through: Appearance not given.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **01.10.2024**

CM APPL. 57761/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The application is accordingly disposed of.

C.R.P. 284/2024

3. A Revision Petition under Section 115 read with Section 151 CPC has been filed on behalf of the petitioner to challenge the Order dated 04.06.2024 vide which the application under Order VII Rule 11 CPC filed by the petitioner/defendants has been dismissed.
4. The plaintiff had filed a suit for Possession, Rendition of Accounts, Permanent and Mandatory Injunction claiming itself to be the joint owners/bhumidar of agricultural land which is the suit property through his father and grand father. It was claimed that in/about 1977 the area around the suit land started developing into unauthorized colony. However, after



evicting the agricultural tenant i.e. Guljari Lal from the agricultural land, the above mentioned plaintiffs being poor person were not able to raise any construction on the suit land except the boundary wall in the year 1994. In March, 1999 Shri Deep Chand Yadav father of Mansa Ram Yadav (defendant No.1), Ram (Defendant No.2) and Chander grand-father (defendant No.3), Shri Vikram Yadav S/o Lupe Sh. Bhagirath Yadav who was running a stall at Railway Station, Nangloi in the name and style of M/s Deep Chand Chandro Devi contacted the above said plaintiffs for taking the property on rent with permission to construct temporary structure of two Tin Sheds in the corner of the said property. The plaintiffs thus agreed and an oral tenancy was created @ Rs.1500/- per month excluding all other charges which they had continued to pay to the co-owners and the said allegation, relief of possession of property has been sought.

5. The Written Statement was duly filed by the defendant, wherein certain pleas were taken. On the similar ground application under Order VII Rule 1`1 CPC was filed, wherein the rejection of the suit was sought on the ground that the defendants are in possession through Guljari Lal, who was the owner of the suit property for which they have relied upon the Revenue documents.

6. It is further contended that the suit is not maintainable under Specific Relief Act.

7. The third ground take was that the suit was not valued properly for the purpose of Court Fee. The Court Fee had been affixed by taking the rental value of Rs.1500/- per month, when in fact, it is the suit for Possession which has been filed and the defendants were never a tenant in the suit premises.



8. **Submissions heard.**

9. In so far as the plea of the defendant/revisionist that they are in the occupation of property in the capacity of co-owners is concerned, it requires trial and the documents on which the defendant had placed reliance cannot be considered while adjudicating in the application under Order VII Rule 11 CPC. Learned Judge as, therefore, rightly held that it is a matter of trial which can be decided only after recording of evidence.

10. The second ground taken is that the suit has not been valued properly for the purpose of court fee and valuation. However, here again it has been rightly observed that it is a mixed question of law as to whether the defendants are in occupation of property as tenant or in the capacity of owners. Therefore, at this stage, the determination of Court Fee being the mixed question of fact and law, has been rightly directed to be considered under Order VII Rule 11 CPC.

11. The third objection taken in regard to suit not being maintainable under Specific Relief Act, would need further details.

12. The Application under Order VII Rule 11 CPC has been rightly rejected by the learned Trial Court.

13. There is no merit in the present Revision which is hereby dismissed along with the pending applications.

NEENA BANSAL KRISHNA, J

OCTOBER 1, 2024/va