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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 293/2024, CM APPL. 59029/2024, CM APPL. 59031/2024
PRIYA GRACE VARGHESE

Through:Petitioner
Learned Counsel (Appearance not given).

versus

AMIT KUMAR & ORS.
Through:Respondent
Appearance not given.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **07.10.2024**

CM APPL. 59030/2024 (Seeking Exemption)

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

C.R.P. 293/2024

3. A Civil Revision Petition under Section 115 of the CPC has been filed against the impugned Order dated 18.05.2024 vide which the Application under Order VII Rule 11 CPC filed by the Revisionist/defendant, has been rejected.
4. The learned District Judge in the impugned Order dated 18.05.2014, while dismissing the application under Order VII Rule 11 CPC, observed that the contentions raised in Order VII Rule 11 CPC involved mixed question of fact and law and therefore, required trial by way of evidence.



5. The Revisionist/defendant aggrieved by the said Order, has filed the present Revision, claiming that the plaintiff has filed a ***Suit for Possession*** by claiming that the suit property is ancestral. In support of his contention, the plaintiff has relied upon two documents: one is Khasra Khatauni in the name of his grand-father and the second is the Site Plan. There are also various photographs filed of the suit property. However, none of these documents prove the ownership of the plaintiffs in the suit property. Furthermore, no Declaration has been sought by the plaintiffs about being the owner of the suit property. Therefore, the Suit itself was not maintainable and liable to be rejected essentially when no prayer of Declaration of Title in the suit property has been made.

6. **Submissions heard.**

7. The plaintiff in his Complaint has made specific averments that this property was ancestral of which he was in possession, but in 2021 he got to know that the property has been trespassed into by the defendant. He had made a Criminal Complaint as well as filed an Application under Section 156(3) Cr.P.C, though he did not meet any success. Therefore, he has filed the Suit for Possession.

8 The defendant/Revisionist had contested the Suit by claiming that he is the owner and in possession of the suit property since 1993 on the basis of GPA, Agreement to Sell, Affidavit, etc.

9. It has been rightly observed by the learned District Judge that while deciding the Application under Order VII Rule 11 CPC, only the averments made in the complaint need to be considered. All the aspects that had been raised by the defendant/Revisionist in his Application under Order VII Rule 11 CPC cannot be considered while deciding the Application under Order



VII Rule 11 CPC. The defendant has claimed that he is the owner and in possession of the suit property needs evidence to establish his Title.

10. The Revisionist has placed reliance on Anathula Sudhakar vs. P. Buch Reddy (Dead) by LRs and Ors, wherein the Apex Court had observed that where there is a cloud raised over the plaintiff's title and he does not have possession, the suit for Declaration and Possession with or without a consequential Injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has sue for possession with a consequential Injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

11. The plaintiff has been categorical in asserting that he is the absolute owner of the suit property and has been dispossessed only in 2021. It is the defence of the defendant that he is the owner, which he would be required to establish for claiming a title superior to that of the plaintiff. Therefore, the judgment relied upon by the Revisionist is not applicable to the facts of this case, at this stage.

12. There is no infirmity in the Order of the learned District Judge; the Revision is hereby dismissed along with the pending Applications.

NEENA BANSAL KRISHNA, J

OCTOBER 7, 2024/va