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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 20.11.2024

+ **CM(M) 3854/2024**

JAGVEER

.....Petitioner

Through: Mr. L.K. Singh, Advocate.

versus

ASHA DEVI

.....Respondent

Through: Ms. Aishwarya Kane,
Advocate.**CORAM:-****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT (ORAL)****CM APPL. 67329/2024 (exemption)**

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 3854/2024 & CM APPL. 67328/2024 (stay)

1. The present petition assails the impugned order dated 09.07.2024 and 04.09.2024, passed by the learned Civil Judge, South, Saket in CS SCJ No. 342/2022.
2. Learned counsel for the petitioner has argued that directions issued by the learned trial court in the last para of the order dated 09.07.2024 were illegal, erroneous, unnecessary and uncalled for,



inasmuch as, once having held that the suit was not barred under Order 7 Rule 11 CPC and having dismissed the application of the respondent under Order 7 Rule 11 CPC, it was incumbent upon the court to have proceeded with the suit rather than issuing direction for either amending the suit or withdrawing the same with liberty to file a fresh suit.

3. It is argued that there was an error apparent on the face of the record in the concluding para of order dated 09.07.2024, particularly, when in the same order the court had dismissed the application under Order 7 Rule 11 CPC of the respondent, which clearly implies that the suit was legally maintainable.

4. Per contra, the learned counsel for the respondent has submitted that the title of the plaintiff is under cloud, inasmuch as, respondent has raised serious objections to the ownership of the suit property, and therefore, petitioner is required to file suit for declaration, possession and injunction in terms of judgment passed in **Anathula Sudhakar Vs. P. Buchi Reddy (2008) 4 SCC 594.**

5. Perusal of the record reveals that plaintiff filed a suit for recovery of possession, arrears of rent, mesne profits and permanent injunction on the ground that respondent was inducted by him as a tenant in the demised premises at a monthly rent of Rs. 6000/- per month vide rent agreement dated 05.10.2018.

6. Respondent filed written statement, stating that she herself was the owner and in possession of the suit property. She stated that



petitioner was a complete stranger to the suit property and had no title whatsoever in the suit property. She took the stand that in the year 2018, she took a friendly loan of Rs. 6,50,000/- from one Rajender, nephew of the petitioner and that at the time of taking loan, the said Rajender took away the title documents of the suit property which were in the name of respondent on a false pretext of keeping the documents with him as security for the loan. He had also obtained her signatures on some documents on the false pretext that they were related to repayment of the loan.

7. In her application under Order 7 Rule 11 (d), respondent stated that the impugned documents relied upon by the plaintiff were obtained by defrauding the respondent as to the nature of the documents.

8. The Hon'ble Supreme Court in the case of **Anathula Sudhakar Vs. P. Buchi Reddy** (*supra*) held that where the title of the plaintiff is under cloud or in dispute and he is not in possession or not able to establish possession, such plaintiff will have to file a suit for declaration, possession and injunction.

9. A perusal of the plaint would show that the suit of the petitioner for ejectment, arrears of rent, damages, mesne profits and permanent injunction is based upon the rent agreement between the petitioner as the landlord and the respondent as a tenant and not based on the ownership documents. In **Shri Ram Pasricha Vs. Jagannath, AIR 1976 SC 2335**, the Supreme Court held that in a suit for eviction, the



tenant is estopped from questioning the title of the landlord. Similarly, in the case of **Vashu Deo Vs. Balkishan (2002 1 SCR 171)**, the Supreme Court ruled that Section 116 of the Evidence Act which codifies the common law rules of estoppels between landlord and the tenant, provides that no tenant of immovable property or person claiming through such tenant, shall during the continuance of the tenancy be permitted to dispute the title of his landlord over the tenancy premises at the beginning of the tenancy. The court further ruled that the principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. The rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession of his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title holder.

10. It could thus be seen that in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases, the plaintiff has to seek relief of declaration.

11. From the written statement filed by the respondent, it becomes clear that she has not disputed the execution of the rent agreement but her plea has been that the same was got executed fraudulently. The same is a disputed question of fact to be decided by way of evidence.



12. While deciding the application under Order 7 Rule 11 (d) CPC, trial court was supposed to consider whether the suit appears from the statement in the plaint to be barred by any law.

13. In Para-13 of the impugned order, the trial court categorically held that no ground was made out to reject the plaint and accordingly, dismissed the application under Order 7 Rule 11(d) CPC. However, in Para No. 14, it proceeded further to direct the petitioner to either carry the necessary amendments in the plaint or withdraw the present suit with liberty to file a separate comprehensive suit.

14. Having dismissed the application under Order 7 Rule 11(d) CPC, it was not incumbent upon the court to pass any further direction for amendment/withdrawal of the plaint. Such a direction issued by the trial court is superfluous and cannot be sustained.

15. Since challenge of the petitioner only pertains to the directions in Para No. 14 of the impugned order, petition is allowed and impugned order dated 09.07.2024 is partly set aside to the extent it contains directions in Para No. 14 of the impugned order.

16. Petition is accordingly disposed of.

RAVINDER DUDEJA, J

November 20, 2024/RM