

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

Date of Reserve: 1st February, 2010
Date of Order: 8th February, 2010

CM (M) No. 137/2010 & CM No. 1931/2010

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08.02.2010

**Shri Suresh Kumar, Deceased
Thru LRs**

... Petitioner

Through: Mr. Virender Singh, Advocate

Versus

**Shri Om Prakash, Deceased
Thru LRs**

... Respondents

Through: Mr. Lalit Gupta, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

The petitioner has preferred this petition under Article 227 of the Constitution of India against order dated 11th December, 2009 passed by the learned ADJ dismissing an application under Order 41 Rule 27 CPC for additional evidence at the appeal stage.

2. The petitioner sought to produce certain documents before the Appellate Court and wanted those documents to be taken by way of additional evidence so as to prove the case of the petitioner of adverse possession. The trial Court observed that it is the case of the petitioner that these documents were in possession of the petitioner and these documents could not be filed due to inadvertence before the trial Court. The learned ADJ who was hearing the appeal came to the conclusion that the additional evidence can be allowed by Appellate Court only under the following three circumstances:

1. The Court from whose decree the appeal is preferred has refused to admit evidence, which ought to have been admitted, or

2. The parties seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
3. The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

3. The appellate Court found that the case was not covered under any of the circumstances and dismissed the application.

4. It is settled law that the additional evidence cannot be admitted by the Appellate Court to enable unsuccessful litigant to fill up the lacunae in evidence. Additional evidence can be admitted only under the circumstances enumerated above by appellate court. The plea taken by the petitioner that the documents could not be filed inadvertently by the previous Advocate is no plea to entertain the application for additional evidence. The trial Court rightly dismissed the application. I find no merits in this petition. The petition is hereby dismissed.

February 08,2010

SHIV NARAYAN DHINGRA, J.

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