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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: February 01, 2010

+ CM(M) 135/2010

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Satendra Kumar Baliyan

Through: Mr. Pradeep Kumar Arya, Advocate

01.02.2010

...Petitioner

Versus

Smt. Sheela Srivastava & Ors.

Through:

...Respondents

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?

ORAL

1. The present petition reflects how the petitioner an advocate indulged into malpractices, highhandedness and illegal trespass and then is trying to prolong the case. The petitioner, who is an advocate, taking benefit of the trust of his client occupied a room in the property of the respondent and when respondent filed a suit for possession, the petitioner took a plea of an oral agreement to sell and payment of cash consideration without receipt. After evidence of some of the plaintiff witnesses had been recorded, he made an application under Order XI Rule 12 read with Order VII CPC Rule 1 CPC for discovery and production of a power of attorney alleging that plaintiffs were not the co-owner of the property. He submitted that a complaint was filed against him before the Bar Council and during proceedings, he came across a photocopy of general power of attorney and this general power of attorney has material bearing on the title of the plaintiff's. It is also stated that on demise of Shri Shankar Singh, one of his daughters namely Smt. Usha Shankar Singh became the absolute owner of the property. The trial court disallowed the application of the petitioner since the case of the petitioner in the written statement was that brother of plaintiff had allowed him to stay in the suit property

until completion of construction on the first floor, for which he had oral agreement to sell. He has not claimed any kind of title or right in respect of the portion in which he was presently there and his position, admittedly was that of a trespasser. The trial court found that the application was devoid of any merits and dismissed the same.

2. The order of learned trial court does not suffer from any irregularity. The petitioner has not claimed any right in the ground floor of the property and has relied upon an oral agreement to sell in respect of first floor of the property. The evidence recorded so far shows that the petitioner was maintaining a bank account during the period when he claimed an oral agreement to sell was entered into and he paid the consideration in cash but in his bank account even the minimum balance was not there. The trial court rightly looked into the evil design of the petitioner of delaying the matter and perpetuating fraud. This petition has no force and is hereby dismissed. A copy of this order be sent to the trial court.

February 01, 2010
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SHIV NARAYAN DHINGRA J.