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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.206 of 2010 & C.M. Appl. Nos.2650-2651 of 2010

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11.02.2010

LEELA DEVI & ORS.

.....Petitioners

Through: Mr. Manoj Kumar, Advocate.

Versus

SARLA GARG

.....Respondent

Date of Order: 11th February, 2010

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?

J U D G M E N T

1. This petition under Article 227 of Constitution of India has been preferred against order dated 1st February, 2010 whereby an application of the petitioner under Order XIV Rule 5 CPC was dismissed and an adjournment was granted subject to payment of cost of Rs.500/-.

2. The petitioner moved an application under Order XIV Rule 5 CPC seeking amendment of issue Nos.1 and 2 and for framing additional issues. The case on that day was fixed for defendant's evidence and instead of examining witness, this application was moved. An additional issue sought to be framed by the petitioner was in respect of ownership of the premises. The petitioners were tenants in the premises and the suit has been filed by the legal heirs of the deceased landlord against the petitioners. The petitioners were also not the original tenants but the legal heirs of the deceased tenant.

3. The trial court observed that in view of Section 116 of Indian Evidence Act, the petitioners have no right to challenge the ownership of the premises. The trial court also observed that the two issues for changing onus of which the petitioners were pressing had arisen because of preliminary objections taken by the petitioners in the written statement. Thus, the onus of proving these preliminary objections was on the petitioners. The trial court observed that the application was vexatious and was an effort to delay the proceedings.

4. On 1.2.2010, the witnesses of defendants were to be examined. The witness was present but the defendant did not allow her cross-examination to be conducted by the plaintiff on the ground that the application be first decided. When the application was decided by the trial court, the defendants still did not allow cross-examination on the ground that he wanted to prefer an appeal against the order. The trial court thus allowed the adjournment subject to payment of cost of Rs.500/-. The trial court observed that defendant No.9 Ms. Pooja was not being examined in the case by defendants despite repeated opportunities having been taken for her cross-examination. The cross-examination of other witnesses had been done and remaining cross-examination was deferred because the defendants wanted to examine defendant No.9 in the matter. The defendants were not producing defendant No.9 neither dropping her and were just dragging the case.

5. It is settled law that in a case of eviction against the tenant, the landlord or his legal heirs are not supposed to prove the strict ownership. When the legal heirs of a deceased landlord are brought on record, their right to represent the estate of deceased is considered and they are brought on record only if they have a right to represent estate of a deceased. Once legal heirs are brought on record after consideration of this, the legal

heirs are not supposed to prove the ownership of the premises again. Section 116 of Indian Evidence Act creates a bar against the tenant in challenging the ownership. The trial court, therefore, rightly did not allow framing of additional issues. I also find no infirmity in the order of the trial court dismissing the plea of amending issues framed on the basis of preliminary objections taken by the defendants.

6. The present petition is a misuse of judicial process. The order of the trial court shows that the petitioner had been in the habit of making one or the other application just to drag the case. The petition is hereby dismissed with cost of Rs.25,000/- being a frivolous petition. The cost shall be recovered by the trial court and be deposited with District Legal Services Authority.

SHIV NARAYAN DHINGRA J.

FEBRUARY 11, 2010
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