

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

Date of Reserve: 20th January, 2010
Date of Order: January 25, 2010

CM(M) No. 1848/2005

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25.01.2010

SANJAY KUMAR SINGH

... Petitioner

Through: Mr. Piyush Sharma, Advocate &
Mr. Vikram Saini, Advocate

Versus

LAXMI NARAYAN & ORS.

... Respondents

Through: Mr. Hitender Kapur, Advocate for R-1&2

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

By this petition the petitioner has assailed orders dated 2.12.2004 and 23.5.2005 passed by the Trial Court disposing of several applications. During arguments, the Counsel for the petitioner made a statement that he was not pressing this petition in respect of other orders but he was pressing this petition only in respect of one order dated 2.12.2004 whereby an application under Section 151 CPC was disposed of and the plaintiff (respondent no.1 herein) was allowed to file the correct site plan.

2. It is submitted by the Counsel for petitioner that the plaintiff had filed a site plan along with the plaint and the defendant (petitioner herein) in the WS had taken the stand that this was the correct site plan. During evidence, the plaintiff was cross examined on the site plan and plaintiff admitted the site plan to be correct and dimensions to be correct and by the impugned order the Trial Court had allowed plaintiff to file another site plan on the ground that inadvertently the plaintiff had filed the first site plan with incorrect measurements. This amounted to withdrawal of admission by plaintiff.

3. The petition is opposed by the counsel for respondent on the ground that the order was not going to prejudice the petitioner in any manner. The petitioner

was tenant in the premises and the respondent was landlord. The tenancy of the petitioner was not in dispute. Respondent no.1 had filed a site plan with the plaint in respect of entire premises whereas half of the premises was sold by respondent no.1 to one Amar Singh Rana and remaining portion was in possession of petitioner. The respondent inadvertently filed site plan in respect of the entire portion including the portion sold by him.

Thus placing of correct site plan on record was necessary for proper adjudication of dispute since the dispute was only with the petitioner. The site plan vis-à-vis premises in occupation of the petitioner was rightly allowed to be placed on record. The filing of correct site plan would not amount to withdrawal of the admission. The earlier site plan was in respect of whole premises while the site plan allowed by the Trial Court was in respect of the premises under occupation of the petitioner.

4. I have seen the Trial Court record. The Trial Court has considered the aspect and objection taken by both the parties and came to the conclusion that it was admitted case that plaintiff was owner of the suit property he had filed this suit for recovery of possession and damages. The parties knew very well which was the portion in their occupation and if an incorrect site plan had been filed the same could be allowed to be corrected. I find no ground to reverse the order of the Trial Court. The Trial Court had committed no jurisdictional error. The Trial Court on finding that the site plan on record did not give the correct plan of the premises, in question, was within its jurisdiction to permit filing of the correct site plan. The dispute was in respect of the portion in possession of the defendant. The plaintiff had a right to correct the site plan during pendency of the suit, if the plaintiff had inadvertently filed a wrong site plan. It is not the case of the petitioner that the site plan now filed by the respondent did not correctly depict the portion in his occupation. His only case is that the respondent earlier had admitted the site plan to be correct, he cannot now withdraw the site plan and file another site plan depicting the correct position.

I find no force in this argument. The petitioner is liable to be dismissed and is hereby dismissed.

January 25, 2010
vn

SHIV NARAYAN DHINGRA, J.