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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 294/2015

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Decided on: 7th April, 2015

SAT PRAKASH GOYAL

..... Petitioner

Through: Mr. Purshottam Kumar, Advocate.

versus

PUSHPA BAHTEL & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 6088/2015 (Exemption)

Allowed, subject to all just exceptions.

CM No.6089/2015 (delay in refiling)

For the reasons stated in the application the delay of 23 days in refiling the petition is condoned.

Application is disposed of.

CM(M) 294/2015 and CM No.6087/2015 (Stay)

1. The Petitioner filed a suit against Pushpa Behal and Amarawati seeking declaration, mandatory and permanent injunction. In the said suit an application under Order 39 Rule 1 and 2 CPC was dismissed vide order dated 8th August, 2012. Sat Prakash Goyal preferred an appeal which was also dismissed vide the impugned order dated 10th December, 2014.

2. Sat Prakash Goyal claimed that Pushpa Behal and Amarawati were the erstwhile owners of the property which is an old haveli constructed single

storey having high of the roof more than 18 ft bearing no. 136, situated at Kucha Ghasi Ram, Chandni Chowk, Delhi. Pushpa Behal and Amarawati desired to sell the said tenanted premises to Sat Prakash Goyal and thus by virtue of a Sale Deed dated 22nd March, 2003 duly registered with the office of Sub-Registrar North, Delhi, the right, title and interest qua the suit property were transferred in favour of Sat Prakash Goyal. Since the roof of the suit premises was in extremely dilapidated and dangerous condition Sat Prakash Goyal installed a fresh roof of tin sheet on the property. However, Pushpa Behal and Amarawati threatened Sat Prakash Goyal and demanded removal of the roof. In the light of these threats the Petitioner filed a suit seeking declaration, mandatory and permanent injunction.

3. In the written statement Pushpa Behal and Amarawati claimed that the Sale Deed was executed with Sat Prakash Goyal in the year 2003 but the same was in respect of a shop on the ground floor without its roof rights and the portion over and above the shop was residential and belonged to Pushpa Behal and Amarawati exclusively. The property comprises of two floors, that is, ground and first floor and the Sale Deed clearly described the property sold as “one shop, ground floor of 137 sq. ft part property 136, Kucha Ghasi Ram”.

4. In view of the contents of the Sale Deed the learned Civil Judge held that the Sat Prakash Goyal has not been able to make out a prima facie case seeking injunction in respect of roof rights and property on the first floor. The appeal filed was also dismissed by the learned Senior Civil Judge vide order dated 10th December, 2014 considering the contents of the Sale Deed. It was further noted that Pushpa Behal and Amrawati had placed on record that the suit property initially itself consisted of ground floor and the first

floor. Letters were issued in this regard by the MCD on 6th August, 2009 with regard to the repairs required to be done.

5. The contents of the sale deed are clear. Only a shop on the ground floor measuring 137 sq. ft., part of property 136, Kucha Ghasi Ram was sold to Sat Prakash Goyal. The fact that the sale deed does not note about first floor of the suit property would not give proprietary roof rights to Sat Prakash Goyal. I find no infirmity in the impugned order.

6. Petition and applications are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 07, 2015
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