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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 291/2015

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Decided on: 6th April, 2015

JHAMMAN LAL (DECEASED) THR

LR HARISH KAPOOR

..... Petitioner

Through: Mr. Deepak Khadaria, Advocate.

versus

AJAY KUMAR & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 5887/2015 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 291/2015 and CM No. 5886/2015 (Stay)

1. Aggrieved by the order dated 12th March, 2015 whereby the application of the Petitioner under Order 1 Rule 10 CPC was dismissed, the Petitioner prefers the present petition.
2. Jamman Lal, the deceased filed a suit against Ajay Kumar, Ishar Singh, Dera Ismail Khan House Building Society and Kulraj Singh seeking declaration, permanent injunction and possession in respect of Plot No.B-80 admeasuring 132.19 sq. yards allotted vide letter dated 4th December, 1977. The said suit was filed on 20th June, 1989. In the written statement Ajay Kumar and Ishar Singh stated that by virtue of a General Power of Attorney

which was duly registered Jamman Lal had authorized Ajay Kumar to give possession or to transfer the property in question to any person. Consequently, an Agreement to Sell was entered into and registered receipt for the entire sale consideration and Will was executed by Jamman Lal in favour of Smt. Agyawanti. The possession of the premises had also been taken by Ajay Kumar which was passed on to Agyawanti which was mentioned in all statutory records. Despite this fact to the knowledge of Jamman Lal he did not implead Smt. Agyawanti or any of her legal heirs. Further even after the same was mentioned in the written statement no steps were taken by Jamman Lal to implead Agyawanti or her legal heirs. Jamman Lal died during the pendency of the suit in March, 1990 and hence his legal heirs were brought on record.

3. An application was filed by the legal heirs of Jamman Lal on 7th November, 2009 under Order 1 Rule 10 CPC seeking impleadment of J.N. Satija son of Mr. T.R. Satija and Mrs. Monika Satija, wife of Mr. Arun Satija on the ground that at the time of filing of the suit, the suit property was a vacant plot and during the pendency of the suit three storeyed building had been constructed by J.N. Satija who was occupying the said building and the second floor was occupied by Mrs. Monika Satija wife of Arun Satija. According to the LRs of Jamman Lal this fact was revealed when DW-3 N.K. Maurya was examined on 20th April, 2009.

4. In the reply to the application under Order 1 Rule 10 CPC Ajay Kumar and Ishar Singh stated that it was the case of Jamman Lal himself in the plaint that Ajay Kumar in connivance with Ishar Singh got a General Power of Attorney executed in favour of Ajay Kumar on 11th April, 1980 which was revoked vide public notice dated 6th July, 1988. Jamman Lal or

his legal heirs have not sought cancellation of the said Power of Attorney admittedly executed by Jamman Lal in favour of Ajay Kumar and all he sought in the plaint was injunction from raising construction which was rejected by this Court on 8th August, 1981. It was further stated that in the written statement of Ajay Kumar itself it was brought to the notice of Jamman Lal that an Agreement to Sell was entered into with one Smt. Agyawanti from whom Jamman Lal received a valuable consideration which receipt were duly registered. Further the factum of possession being handed over and construction completed was also noted in the written statement. Despite Agyawanti being a necessary party neither she nor her legal heirs were impleaded and hence subsequent purchasers cannot be directed to be impleaded. Further in the replication, the legal heirs of Jamman Lal admitted that Defendant No. 4 Kulraj Singh entered into an Agreement to Sell regarding the suit property to one Smt. Sneh Lata Dawar and Jamman Lal was made fully aware of the execution of the Agreement to Sell, Registered Receipt of Consideration and Registered Will executed by him in favour of Agyawanti. Jamman Lal was also aware about the sale of suit property to the Smt. Sneh Lata, still he did not implead either Agyawanti or Sneh Lata Dawar as party. In the reply it was further stated that the suit property was further transferred from Smt. Sneh Lata Dawar, however, all the successors have not been impleaded.

5. Thus despite being conscious of the facts from the written statements and having not impleaded Agyawanti and her legal heirs, the legal heirs of Jamman Lal cannot now claim that they have now come to know of the subsequent event of construction and further sale of property.

6. The application was thus rightly rejected by the learned Civil Judge and I find no reason to interfere in the same.
7. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 06, 2015
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