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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 525/2015

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Decided on: 26th May, 2015

RAJINDER SINGH SAINI

..... Petitioner

Through: Mr. Ashok Sapra, Mr. Jaganath
Chauhan and Mr. Y.R. Sharma,
Advocates.

versus

SH KARAMVIR SAINI & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 10213/2015 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 525/2015 and CM No. 10120/2015 (Stay)

1. Aggrieved by the order dated 31st March, 2015 whereby the application of the Petitioner under Order XXII Rule 26 read with Order XXXIX Rule 1 and 2 was dismissed with a cost of Rs.10,000/-, the Petitioner prefers the present petition.

3. A suit was filed by Karamvir Saini and others against the Petitioners, that is, Rajinder Singh Saini, Vir Singh Saini, Smt. Vijay Laxmi, Smt. Usha, Smt. Santosh, Smt. Alka, Dharamvir Saini, Nand Lal Saini, Hukum Singh Saini, Tina Saini, Rishal Singh and Sardar Singh seeking partition and permanent injunction.

4. In the said suit the Petitioner who was Defendant No. 1 objected to the partition and claimed that he was owner of the suit property along with the

super structure. On the pleadings of the parties, the following issues were settled vide order dated 27th April, 2004:

- “(i) Whether the suit property is liable to be partitioned? If yes, what is the share of respective parties? OPP.*
- (ii) Whether the defendant No.1 is the owner of the suit property along with super structure on it? OPD-1.*
- (iii) Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.*
- (iv) Whether the suit is bad for non joinder of LRs of Premwati, daughter of Sohan Singh? OPD*
- (v) Whether this court has no jurisdiction to entertain the suit? OPD.*
- (vi) Relief.*

5. Prior to Suit No.365/2008, a civil suit was filed by Rajender Singh Saini for injunction praying that he should not be dispossessed from the suit property, that is, Property No.3961, Gali Ahiran, Pahari Dheeraj, Delhi on the basis of a Will executed by his father Laxman Singh. One of the pleas taken in the cross-examination of the Plaintiff's witness in the said suit was that the suit property was a lease hold property of Delhi Development Authority and earlier thereto it was Nazul property, thereafter it was held by Improvement Trust and consequently by DDA. The suit property was purchased by Ram Prasad from Har Dayal however, there were no documents relating to the said subsequent transaction. Vide the judgment in Suit No. 365/2008 evidence of DW-3 Shri Kamleshwari, Patwari was led who brought the summoned record in respect of the suit property including

Jamabandi and it was noted that the name of Pattedar was Ram Prasad and the Patta was cancelled in the year 1962 by DDA and thereafter it was not extended to any other. Kamleshwari Patwari stated that the land was transferred to DDA by way of Nazul Agreement, 1937 however, he had not brought on record any documents to show in this regard. Even DW-4, Om Prakash, LDC from the Old Scheme Branch was summoned who stated that the summoned record was not with their Branch.

6. After the parties led their evidence the learned Trial Court decided Issue No.2, that is, whether the present Petitioner was the owner of the suit property along with the super structure against him and with regard to the Issue No.1 relating to whether the suit property was liable to be partitioned and in what shares a preliminary decree of injunction and partition has passed and held that the Plaintiff were entitled to 1/4th undivided share in the suit property. No appeal was filed against the judgment dated 26th September, 2011 in Suit No.365/2008 and thus the same has attained finality.

7. Much after the passing of a preliminary decree dated 26th September, 2011 the Petitioner/Defendant No.1 in the suit filed the application under Order XXI Rule 26 read with Order XXXIX Rule 1 and 2 CPC which was dismissed by the impugned order. In the application the Petitioner again raised the issue that the suit property was lease hold property and the lease of the suit property has already been cancelled by the Government in the year 1962 and since 1971-1972 the Government is the owner of whole of the Khasra 277.

8. The learned Trial Court vide the impugned order held that the contention of the Petitioner has already been dealt with in the judgment dated 26th September, 2011 passing the preliminary decree and the present

application filed was misconceived and not maintainable in the suit and thus dismissed the same with cost of Rs.10,000/-.

9. The main contention of learned counsel for the Petitioner before this Court is that fraud vitiates all proceedings and this Court is required to look into the same. I have perused the application filed by the Petitioner wherein the impugned order has been passed. The only fact mentioned is that the Plaintiff remained silent and rather deliberately concealed the vital relevant fact, that is, the property is lease hold property and the lease of the suit property has already been cancelled by the government in the year 1962 and since the years 1971-72 the Government is owner of whole of Khasra No.277. No fraud has been alleged nor proved. The fact as sought to be got decided by this application has already been dealt with by the learned Trial Court and appreciated on the basis of evidence led by the parties. No challenge to the judgment dated 26th September, 2011 has been made by the Petitioner till date and hence the findings in the judgment cannot be re-argued in the garb of the impugned application.

10. Consequently, the petition and the application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 26, 2015
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