

\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 240/2016 & C.M.No.9040/2016**
BAHADUR SINGH

..... Petitioner

Through Mr. Mahmood Hasan, Adv.

versus

SAT PRAKASH

..... Respondent

Through Mr. Sarthak Guru and Mr. Mohit Nagar,
Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.03.2016**

The petitioner is aggrieved by the order dated 30.11.2015. His submission is that the site plan which was an integral part of the suit property did not form part of the decree and as such the consent decree (dated 02.01.2013) could not be executed.

This submission is disputed. Learned counsel for the non-applicant/respondent on advance notice has put in appearance. He has drawn attention of this Court to the order dated 02.01.2013 which was the date on which a consent decree had been passed on the statement made by the parties. The statement of the non-applicant/Sat Parkash dated 04.12.2012 was to the effect that he had delivered the physical possession of the suit property to the applicant on 02.12.2011 in the presence of four witnesses and all mesne profits stood paid. Submission being that the question of the site plan now being incorporated as a part of the decree does not arise.

The impugned order had noted these facts in the correct perspective. The impugned order had noted that the present application (under Section 152 of the CPC) seeking a modification in the judgment dated 02.01.2013 was not predicated on any mistake or a typographical error; it was not an accidental slip or omission which would call for any order within the ambit of Section 152 of the CPC. The site plan now sought to be incorporated did not find mention in the application filed by the parties under Order XXIII Rule 3 of the CPC as also their affidavits which they had annexed along with the joint application. The mediation proceedings also had not made any mention of a site plan. The Trial Court had noted that the two site plans proposed by both the parties were in conflict with one another and such a conflict could not be resolved in terms of an application under Section 152 of the CPC and at the cost of repetition, this site plan had even otherwise nowhere found mentioned in the joint application filed by the parties under Order XXIII Rule 3 of the CPC or even before the Mediation Cell.

The impugned order now being challenged before this Court is an exercise which appears to be malafide. Present petition is wholly unmaintainable. The petitioner is trying to harass the non-applicant and in the bargain creating delays in procedures and thus appears to be an exercise which is far from bonafide. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 11, 2016

A