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

+ CM(M) 182/2016

SARLA AGGARWAL

..... Petitioner

Through Mr. Samrat Nigam, Adv.

Versus

ATTAR SINGH & ORS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **23.02.2016**

C.M. No.6672/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Application disposed of.

CM(M) 182/2016 & C.M. No.6671/2016 (stay)

The petitioner is aggrieved by the findings returned by the Trial Judge in its order dated 09.02.2016 wherein his application filed under Order 12 Rule 6 of the CPC stood dismissed.

Record shows that the present suit is a suit filed by the plaintiff (Sarla Aggarwal) against five defendants. The suit is for declaration and injunction. Her contention before the Trial Court was that she is a bonafide purchaser of the suit property which she had purchased by virtue of a sale deed dated 23.12.2011. She later on learnt that this property on the strength of a notarized power of attorney has been sold by defendants No. 2 to defendants No. 3 to 5 and this was by virtue of sale deeds dated 10.09.2010 and 25.10.2010; these sale deed have been executed by defendant No. 2 on the strength of a notarized power of

attorney (dated 23.10.2001) and a notarized power of attorney has no strength in the eye of law as in terms of Section 33 of the Registration Act; such a power of attorney would be inoperative and thus the sale deeds executed by defendant No. 2 in favour of defendants No. 3 to 5 are a nullity and are liable to be cancelled.

Written statement had been filed by the defendants in the Trial Court.

In the course of the proceedings, the plaintiff came to file the present application under Order 12 Rule 6 of the CPC. His submission being that it is an admitted fact that the power of attorney dated 23.10.2011 is notarized and not registered and for this attention has been drawn to para 2 of the reply filed by defendant No. 2 to the application under Order 12 Rule 6 of the CPC. Submission of defendant No. 2 being that it was a genuine and an authenticated power of attorney.

The impugned order had refused to decree the suit of the plaintiff as the Court had rightly noted that the statement of defendant No. 2 even presuming that it was admitted that it was a notarized power of attorney on the basis of which the sale deed had been prepared qua defendants No. 3 to 5; yet the rights of defendant No. 3 to defendant No. 5 could not be curtailed and quashed without putting the parties to trial as there was no admission made by defendants No. 3 to 5; defendants No. 3 to 5 stated that they were the owners of the suit property by virtue of sale deeds which have been executed in their favour and which were duly registered on 10.09.2010 & 25.10.2010 and which are even otherwise prior to the sale deed dated 23.12.2001 on the strength of which the plaintiff is claiming her title.

This Court is in agreement with the order passed by the Trial Judge. There being no transparent, unambiguous admission made by the defendants before the Trial Court and especially keeping in view the rights of defendants No. 3 to 5, this Court is not inclined to pass any order upsetting or reversing the order passed by the Trial Court.

This petition is accordingly dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 23, 2016

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