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

+ CM(M) 378/2016

LAJINDER SINGH ..... Petitioner

Through Petitioner in person

versus

DARSHAN KAUSHIK AND ORS ..... Respondent

Through Mr.R.D.Tyagi and Mr.T.N.Tyagi,  
Advts.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

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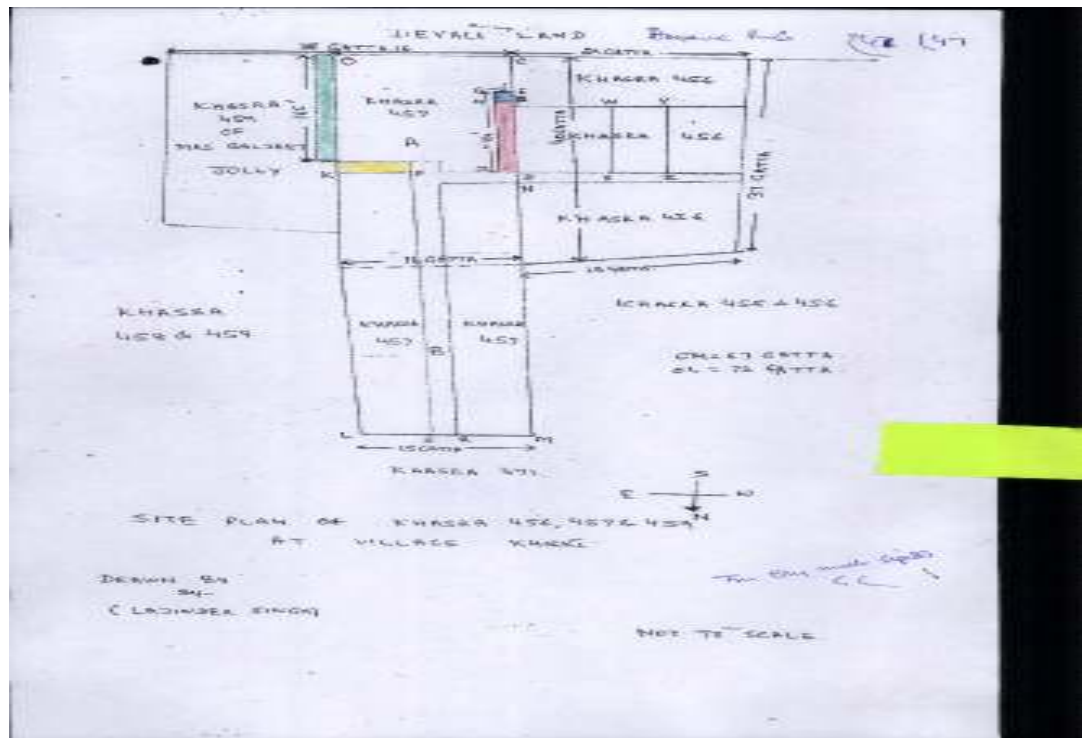
**29.09.2016**

1. The petitioner had moved an application for direction to JD No.3 to restore the Wall ED by shifting the same to a distance of 12 feet in a straight line with the wall of the room EF as shown in Ex.PW1/4 i.e. site plan.
2. By the present petition the petitioner seeks to impugn the order dated 9.3.2016 by which an application filed by the petitioner/Decreeholder under Section 152 CPC was disposed of.
3. The petitioner/Decreeholder had filed the present suit seeking a decree of possession and mandatory injunction in respect of portion marked EDJG in the site plan regarding Khasra No.457, Village Khirki, Tehsil Mehrauli, New Delhi.
4. The trial court on 7.11.2016 passed the following decree:-  
“In view of the findings given above it is clear that plaintiff is co-owner in the suit property alongwith other LR's of Sh.Sahib Dutta Mal. Defendants have encroached upon the portion shown as ‘EDJG’ (shown as blue and

red coloured in the site plan Ex.PW1/4). Accordingly, decree for possession for the portion marked as 'EDJG' (shown as blue and red coloured in the site plan Ex.PW1/4) situated in Khasra No.457, Village Khirki Tehsil Mehrauli, New Delhi is passed in favour of plaintiff and against defendants. A decree for permanent injunction is passed in favour of plaintiff and against defendants and defendants are restrained from raising any construction or changing the nature of portion as shown in red colour in site plan Ex.PW1/4 as 'FDJH'. A decree for mandatory injunction is passed in favour of plaintiff and against defendants are directed to restore the wall marked as 'ED' in site plan Ex.PW1/4."

5. Hence, the defendant/respondent was directed to restore the wall marked ED in the site plan.

6. In order to better appreciate the facts the appropriate site plan is reproduced as follows:-



7. The trial court disposed of the application filed by the petitioner stating as follows:-

“The only question is of measurement which is admittedly about 12 feet. However, I agree with the point raised by the Ld. counsel for the JD that the measurement of the distance of 12 feet has to be taken from the outer boundary of wall GJ and the proposed wall has to be constructed within distance of 12 feet only and it must come in straight line of EF wall as reflected in site plan Ex.PW1/4. In view of this observation the application stands disposed off accordingly.”

8. The petitioner appearing in person states that the wall which is now to be constructed by the respondent from Point E to D has to be in alignment with the wall already existing from C to E so that the entire wall C to D is in one line. The trial court has accepted this contention but has added that it has to be within a distance of 12 feet taken from the outer boundary wall G to J. It is stated by the petitioner that this may create confusion because 12 feet is only an approximate measure and it may vary by few inches here and there and in fact what is relevant is that the wall is constructed by the respondent from point E to D is actually in alignment with point C to E.

9. In my opinion there is merit in the contention of the petitioner. What the decree does is to pass a decree of possession for area marked as EDJG in the site plan. To satisfy the decree that wall ED has to align with the wall CE, as rightly held by the trial court. To achieve this, the distance may not be exactly 12 ft. as stated in the impugned order. Accordingly, it is clarified that the respondent will construct the wall from point E to point D in a straight line so that the wall continuously form a straight line from point C to D as per the Ex.PW1/4, as above.

10. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

**JAYANT NATH, J**

**SEPTEMBER 29, 2016**

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