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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 235/2015 & C.M. No.4931/2015

MOHD QAMAR

..... Petitioner

Through Mr.S.S.Jain and Mr. Nikesh Jain,
Advocates.

versus

MOHD RAUNAQ

..... Respondent

Through Mr.Basant Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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08.02.2016

Order impugned before this Court is the order dated 04.3.2015 vide which the objections filed by the Objector under Order XLVII read with Order XX1 Rule 26 of the CPC had been dismissed. The Court was of the view that the objections now taken had not been taken at any earlier stage; this was the primary reason for dismissal of the objections.

Record shows that this is an unfortunate dispute between two brothers. The plaintiff has filed a suit seeking recovery of possession of the suit property bearing no.C-833, Gali No.5, Haji Ikram Wali Gali, Chauhan Banger, New Seelampur, Delhi which as per him had been purchased vide certain documents. The documents annexed with the plaint and to which attention has been drawn by the learned counsel for the petitioner include a GPA, will, agreement to sell; all

these documents relate to a property bearing No.C-4/30-B (New Municipal No.C-616).

Learned counsel for the petitioner/objector vehemently points out that the plaintiff has played a fraud upon the Court. In the plaint the suit property has been described as C-833, yet the documents filed along with the plaint discloses it as property bearing No.C-4/30-B (New Municipal No.C-616). Further submission being that the ex parte decree had been obtained by the plaintiff in his favour on 05.01.2013 of which the petitioner had learnt on or around 24.10.2014 pursuant to which an appropriate application under Order IX Rule 13 CPC had been filed on 01.11.2013. This application had been dismissed largely on the ground of limitation and this has been affirmed by the higher Court also.

Before the Executing Court, the petitioner has filed objections as noted supra. These objections have been dismissed by the Trial Court as these objections were taken by the petitioner before the Trial Court for the first time in the execution petition. Learned counsel for the petitioner points out that there was no occasion to take these objections earlier. This suit was a fraud played upon the Court as in the plaint the suit property has been described as C-833 whereas the documents appended with the plaint show a different number of the suit property. A query has been put to the learned counsel for the respondent on this count to which she states that there appears to be a mistake on the part of the plaintiff but the mistake is not deliberate.

In the interest of justice, both the parties may be permitted to take part in the execution proceedings and the Executing Court shall

frame issues and allow the parties to lead evidence which shall be filed by way of affidavits to decide the objections afresh which shall be disposed of on merits.

Parties are directed to appear before the Executing Court 01.3.2016.

Needless to state that the executing proceedings will be stayed till the disposal of the objections.

With these directions this petition is disposed of.

INDERMEET KAUR, J

FEBRUARY 08, 2016

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