

\$~A-31

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

+ CM(M) 735/2016

PAWAN KUMAR Petitioner
Through Mr. Amitabh Kumar Verma,
Advocate.

versus

DINESH GARG & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **03.08.2016**

CM No. 27664/2016(exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 735/2016 and CM No. 27663/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 05.05.2016 passed by the appellate court. The plaintiff has filed a suit for permanent injunction to restrain the defendants to raise any construction on the suit property i.e. Plot No. 29 and 29A, area measuring 100 sq. yds and 101 sq. yds. respectively, out of Khasra No. 76/8, situated at village Ghewra abadi known as Tyagi Vihar, Ghewra, Delhi. Along with the plaint, the petitioner filed an application for ad interim injunction.

2. The trial court vide its order dated 11.10.2012 dismissed the said application. The trial court concluded that the demarcation report of SDM depicts that the respondents are in possession of the area marked as blue

and that the property falls in Khasra No. 76/4 and not 76/8 as claimed by the petitioner. The trial court also relied upon the report of the Local Commissioner. Hence, it concluded that the petitioner has failed to show any prima facie case in his favour showing that he is in possession of the property and dismissed the application.

3. The appellate court vide its order dated 05.05.2016 noted that the reasoning of the trial court was not sustainable. The appellate court noted that the trial ignores the Khatoni for the years 2003-04 which shows that Khasra No. 76/8 is in possession of the Predecessor-in-Interest of the petitioner. The appellate court also concluded that the report of the Local Commissioner is based mainly on the statements of the petitioner and respondents without making any further enquiry into the matter. The appellate court thereafter, however, noted that the averments in the plaint are scanty and do not disclose that the plaintiff is in possession of the suit property. It also noted that as per the averments of the petitioner, on 10.12.2011 when the respondents were trying to raise construction over the suit property, the plaintiff reached there and only made an enquiry. It is also noted that from the pleadings it is not clear as to what ensued thereafter. On the basis of these averments, it was concluded that the petitioner is no longer in possession of the suit property.

4. Learned counsel appearing for the petitioner has relied upon his plaint to contend that a clear averment is made in para 3 of the plaint that the petitioner and his wife are joint owners and are in actual physical possession of the suit property. He also relies upon para 6 of the plaint to contend that immediately after detection about the additional construction on 11.12.2011, he wrote a written complaint to SHO, PS Mundka on

11.12.2011 but the police officials did not take any action against the respondents and the suit was filed.

5. None has appeared for the respondents despite advance service of a copy of the petition to the respondents.

6. Keeping in view the submissions of the petitioner and in the interest of justice, the petitioner is permitted to file a review petition before the trial court pointing out his submissions as stated above to support the contention that the impugned order has an error apparent on the face of the record.

7. Granting the aforesaid leave and liberty to move a review petition within two weeks from today, the present petition is disposed. In case any such petition is filed, the trial court is requested to dispose of the same as per law.

Dasti.

JAYANT NATH, J

AUGUST 03, 2016

rb