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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 839/2016
VIDHYA DEVI & ORS Petitioners
Through: Mr. Charanjit Sharma, Advocate.

versus

DHARAMBIR @ BOBY & ORS Respondents

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% 29.08.2016

C.M. No.31355/2016 (for exemption)

Allowed, subject to all just exceptions.

CM (M) No.839/2016 & C.M. No.31354/2016 (for stay)

1. By the present petition, the petitioner has impugned the order dated 10.6.2016 passed by the appellate court.
2. The petitioner has filed the present suit for permanent injunction. Along with the suit, an application for interim injunction was filed stating that the petitioners are lawful owners and in possession of the suit property and that the suit property is situated on the northern side of Delhi Bawana Road. When the matter came up for hearing, the trial court had passed an *ex parte* stay order. Subsequently, the trial court by a detailed order noted that on the basis of the documents filed by the petitioner, the *prima facie*

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possession of the petitioner in respect of the property falling on the northern side of the Delhi Bawana road could not be ascertained and that the question about the possession of the petitioner can be ascertained only by evidence. The application of the petitioner under Order 39 Rule 1 & 2 CPC was dismissed.

3. The appellate court has also dismissed the appeal stating that the Aks-sizera shows that the land which is claimed by the petitioner being khasra No.37/1/2 is on the southern side of the Delhi Bawana Road. The demarcation dated 4.4.2008 shows the land on the northern side of the Delhi Bawana road. Earlier, the predecessor in interest of the petitioner filed a suit on which the land has been shown on the southern side of the Delhi Bawana Road. In these facts, the appellate court agreed with the view of the trial court and dismissed the appeal.

4. The learned counsel for the petitioner relies upon the report of the local commissioner where in the presence of the parties, the local commissioner has noted that the petitioner is in physical possession of the property which is a part of khasra No.37/1/2. He also relies upon certain proceedings under Section 145 Cr.P.C. including the report of ASI Rajender Singh where he submits that the finding was recorded that the petitioner is in possession. He also relies upon the order of the trial court dated 9.7.2008 where the trial court had noted that the plaintiff is in possession of the suit property and hence had continued the status quo order.

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5. So far as the order dated 9.7.2008 is concerned, that is only a *prima facie* view expressed by the trial court and cannot be binding on the subsequent date when the trial court disposed of the application under Order 39 Rule 1 & 2 CPC. The trial court and the appellate court have given cogent reasons as to why no definite finding can be recorded on the possession of the petitioner. The trial court noted that the report of the local commissioner, for the time being, cannot be relied upon in view of the documents filed by the respondents. The appellate court held that the local commissioner was not assigned the job of seeking ^{the} actual physical possession in respect of land falling on the northern side of Delhi Bawana Road.

6. Keeping in view the observations passed in the impugned order and the conflicting document on record, it is not for this court to enter into the exercise of determining *prima facie* facts. There is no material irregularity in the impugned order. Accordingly, the present petition is dismissed. The trial court is directed to dispose of the suit expeditiously in the facts and circumstances of this case.



JAYANT NATH, J.

AUGUST 29, 2016
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