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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1001/2014 & C.M. No.18340/2014
MAHENDER SINGH

..... Petitioner

Through Mr.J.K.Jain, Advocate.

versus

RAVINDER

..... Respondent

Through Mr.S.K.Mishra and Mr. S.K.Jha,
Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **05.02.2016**

Petitioner is aggrieved by the order dated 24.9.2014 which was in appeal filed against the order dated 27.8.2013. Vide order dated 27.8.2013, the application filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC seeking certain directions had been dismissed. The Appellate Court had endorsed that finding.

The petitioner is aggrieved by this. His submission is that the respondent/defendant had written a letter (dated 27.5.2013) to the Executive Engineer, Bawana, Delhi wherein he had admitted that petitioner Mahender Singh had made a roof about 50 years ago which was in a dilapidated condition and the bricks were falling down on the non-applicant/defendant which created a threat to them. This document has been heavily relied upon by the petitioner to advance his submission that he was entitled to the interim relief to repair the

roof as there was an admission on the part of the defendant that this was in a dilapidated condition.

Record shows that the present suit is a suit for permanent injunction. The plaintiff and the defendant are stated to be residents of Bajidpur Thakran and they have an ancestral house. Site plan has depicted their positioning in the house. The portion marked in yellow colour shown as common passage. Contention of the petitioner is that he had a roof over this passage and he has a room on the first floor. This is the roof which he now wants to repair.

Written statement was filed by the defendant. It is admitted that the property has been partitioned between the plaintiff and the defendant and $\frac{2}{3}^{\text{rd}}$ share had fallen to the share of the defendant and $\frac{1}{3}^{\text{rd}}$ had gone to the plaintiff. It was denied that there was any construction or the roof of which repair was required by the plaintiff. The document heavily relied upon by the plaintiff (dated 27.5.2013) was not a document of the plaintiff.

Before this Court, learned counsel for the defendant submits that he had not filed this document; even presuming it has been filed, he denies the same. The parties are yet to go for trial. The prayers made in the present plaint have also been perused. There are two prayers which are made in the present petition one of which is that defendant be restrained from interfering in replacing of the slab over the portion of the passage (depicted in yellow colour in the site plan). Keeping in view the averments and counter averments made by the parties, that the parties are yet to go for trial and the concurrent finding of fact returned by the two Courts below, the instant prayer

cannot be allowed at this stage unless the parties are relegated to trial. This Court while sitting in power of superintendence under Article 227 of the Constitution cannot interfere in such a finding or order unless there is a perversity. This Court finds no perversity in the order which has been passed by the two Courts below. Reliance by the learned counsel for the petitioner on the two judgments reported as 1975 RLR (Note) 42 Bikramjit Singh Vs. LIC etc.; 1971 RLR (Note) 1 Ram Chand Siri Ram Vs. Mangol Kumar one of the two is misplaced. In the first judgment, the suit was for declaration and injunction. The ratio of this is not applicable to the present case. In the second judgment in which the Court did not interfere with the impugned order primarily for the reason that scope of the Revisional Court is limited. The impugned judgment does not call for any interference.

Petition is dismissed with costs of Rs.10,000/-

INDERMEET KAUR, J

FEBRUARY 05, 2016

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