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

\+ CM(M) 351/2015 & C.M. No.7457/2015

NARESH CHANDRA

..... Petitioner

Through Mr Ravi Gupta, Sr. Adv. with Mr. Sachin Jain, Adv.

versus

REHABILITATION MINISTRY EMPLOYEE COOPERATIVE HOUSE BUILDING SOCIETY LTD & ORS

..... Respondents

Through Mr. Siddharth Panda, Adv. for R-2 & R-5.
Mr. Padam Kant Saxena and Mr. Deepak R. Dahiya, Advs. for R-4.
Mr. Umesh Sharma, Adv. for R-3.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% 27.01.2016

1 The order impugned before this Court is the order dated 09.04.2015 wherein the Trial Judge had refused the prayer made by the plaintiff on his application under Order XXVI Rule 9 of the CPC wherein he prayed for the appointment of a Local Commissioner to demarcate the property in question.

2 Record shows that the present has been filed by the plaintiff for permanent injunction. His case is that the land measuring 5 bigha and 13 biswas falling in khasra No. 27 situated in village Hauz Rani, Patti Hamid Sarai, Tehsil, Mehrauli, New Delhi was acquired by the Government on 13.09.1948; one bigha of land falling in same khasra

continued in ownership and possession of Shubh Ram. On the application filed by Shubh Ram, this one bigha of land situated in khasra No. 27 had been demarcated by the Revenue Authority and the said report is a part of the record. Shubh Ram had sold this one bigha of land in khasra no. 27 to the plaintiff vide registered sale deed dated 04.09.1986 and physical possession of the same had been handed over to the plaintiff. The plaintiff had stored some building material for constructions on the said property. Defendant No. 1 (Rehabilitation Ministry Employees Co-operative House Building Society Ltd.) raised an objection stating that this land belongs to them.

3 It was in the course of those proceedings that an application under Order XXVI Rule 9 of the CPC had been filed. Learned senior counsel for the petitioner has drawn attention of this Court to an order passed by a Bench of this Court (dated 11.03.2014) which was on a writ petition which had been disposed off on the said date. This was W.P. (C) No.485/2014 wherein admittedly the plaintiff was not a party but defendant No.1 and the DDA were parties to that petition. Defendant No.1 society (in that petition) had prayed for demarcation of parcel of land measuring 60 acres (later on reduced to 45 acres) allotted to it in the aforenoted village. The submission of defendant No.1/Society was to the effect that the impugned notice pursuant to which demarcation had been effected on 24.03.2013 was without notice to the society. This demarcation had been challenged in the writ petition and the Court while disposing of the writ petition on 11.03.2014 had passed a direction directing all the concerned parties to be given a prior intimation of the demarcation proceedings sought

to be initiated by them at the instance of the DDA so that they are duly represented on the assigned date and time and the demarcation proceedings can be carried out smoothly.

4 Learned senior counsel for the plaintiff submits that if the demarcation in terms of this order is carried out, the case of the plaintiff would be adequately covered and it would enure to the benefit of all as to whether the land for which the plaintiff is claiming possession actually belongs to him or not. Learned senior counsel for the petitioner has placed reliance upon a judgment reported as (2008) 8 SCC 671 *Haryana Waqf Board Vs. Shanti Sarup and Others* as also another judgment reported as Manu/AP/2249/2014 *K. Dayanand Vs. P. Sampath Kumar* to argue a proposition that even at the level of second appeal where the dispute is raised by the parties relating to encroachment of land, the demarcation of land by a Local Commissioner should be considered.

5 Needless to state that this argument has been refuted by the learned counsel for the respondents. The private respondent is respondent No. 1.

6 Present suit discloses that the plaintiff is in possession in terms of a registered sale deed of one bigha of land in village Hauz Rani, Patti Hamid Sarai, Tehsil, Mehrauli, New Delhi. Admittedly a demarcation report dated 17.02.1986 is also a part of the record. The vehement submission of the learned senior counsel for the petitioner is premised largely on a judgment of a Bench of this Court dated 11.03.2014 in W.P. (C) No.985/2014 where admittedly the plaintiff was not a party. The demarcation carried out for 45 acres of land of

which only a part of it falls in khasra no. 27 had been opposed by the Socieity/defendant No.1. A demarcation report is only a piece of evidence. It may or may not relevant depending upon the factual matrix of the case. Even presuming that the prayer made in the present application is allowed and the demarcation of the land of which only one small parcel is in possession of the plaintiff is permitted it would not resolve the controversy in question. It is also not as if the evidence of the plaintiff is closed. The plaintiff's evidence is yet to commence. It will be open for the plaintiff at the time of his evidence to prove his case on the strength of the averments made in the plaint which is the law; the law being that the petitioner has to prove its case on his own strength. The Trial Judge to that extent was right in holding that it is not for the Courts to collect evidence on behalf of the plaintiff. The observations of the Apex Court in Manu/AP/0566/2005 *J. Satyasri Rambabu Vs. A. Anasuya and Anr* had in fact noted such an observation holding that particularly in a suit for injunction, the appointment of a Local Commissioner for noting physical features of the suit schedule property would amount to collecting evidence in favour of one of the parties. The instant case also appears to be covered by such a scenario. It is for the plaintiff to prove his case on the strength of his own evidence. This petition which is largely premised on an order passed by a Bench of this Court in W.P. (C) No.985/2014 where admittedly the petitioner was not a party and to direct the authorities to get a demarcation effected cannot prove the averments of the plaintiff which is to the effect that the plaintiff had become the owner

of one bigha of land on the strength of a registered sale deed dated 04.09.1986 and he was put in possession of the same.

7 In this background, the impugned order calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 27, 2016
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