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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1053/2014**
OM PRAKASH THAKUR

..... Petitioner

Through **Mr. Rajeshwar Kumar Gupta and Mr.
Sachin Garg, Adv.**

versus

RAJ KUMAR

..... Respondent

Through **Mr R.S. Lathwal, Adv.**

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.02.2016**

The petitioner is aggrieved by the impugned order dated 03.07.2014 vide which his application under Sections 151, 152 & 153 of the CPC for amendment of the judgment and decree dated 06.05.2011 had been dismissed.

Record shows that the suit (subject matter of the present petition) i.e. suit bearing NO. 1589/2010 titled Om Prakash Thakur Vs. Raj Kumar was a suit for possession and mesne profits. The petitioner before this Court is the plaintiff. This suit was decreed vide judgment and decree dated 06.05.2011. Against this judgment, an appeal had been filed by the defendant. The plaintiff was also represented before the Appellate Court i.e. in proceedings in RFA No. 404/2012. This appeal filed by the defendant had been dismissed. Execution proceedings were filed. In the course of execution, the present application came to be filed in October, 2012. The contention of the petitioner/plaintiff is that the

decree was passed not only for the first floor of the property i.e. property bearing flat No. 71, Pocket B-6, Sector-17, Rohini but it also includes the second floor and it was only due to inadvertent error that this did not find mention in the judgment and decree dated 06.05.2011. Accordingly, the present application was filed. To support this submission, learned counsel for the petitioner vehemently submits that even in the plaint in paragraph 7, he has mentioned that the suit property comprised of first floor as also the second floor. Additional submission being that the site plan of the suit property which has been filed also makes a reference to the second floor.

These submissions have been negated. It is pointed out that the documents of title on the basis of which the plaintiff is claiming possession of the suit property (dated 19.12.2006) all relate to the first floor; the prayer made in the plaint is also qua the first floor; the plaintiff/petitioner is trying to play a fraud upon the Court by now seeking an amendment in the decree which had been passed in the year 2011; he had never raised this objection ever before and this is only for the reason that dishonesty has now crept in the mind of the petitioner/plaintiff. This petition deserved to be dismissed with heavy costs.

Record shows that the present suit is a suit for possession which has been filed by the plaintiff against the defendant. The defendant vide documents dated 19.12.2006 had sold this suit property to the plaintiff for a consideration of Rs.40,000/-. The agreement to sell, GPA, Will, receipt etc were duly executed. This finds mention in para 2 of the plaint. Physical possession of the suit property was accordingly handed

over to the plaintiff on the said date. After about four months, the plaintiff had asked the defendant to remove his articles from the premises which were accordingly removed. Para 7 (which has been vehemently relied upon by the plaintiff) merely states that the defendant is liable for mesne profits and the flat on the first floor comprises of one room, kitchen and a toilet whereas there is a two room set on the second floor which could also fetch rent of not less than Rs.4,000/- per month. The averments in para 7 do not at all support the submission of the plaintiff that he had purchased the second floor and he had control and possession over the same. The submission of the learned counsel for the respondent on this score that the second floor has been mentioned only for the purpose of calculation of mesne profits is the correct interpretation of para 7 as para 7 has to be read in conformity to the plaint which nowhere in the entire plaint speaks of second floor.

The prayer clause is also relevant. Prayer (a) reads herein as under:-

“(a) Pass a decree of possession in favour of the plaintiff and against the defendant in respect of property being Flat No. 71, Pocket B-6, Sector-17, First Floor, Rohini, Delhi as shown red in the plan annexed with the plaint, directing the defendant to vacate the hand over the possession of the same to the plaintiff. ”

This also makes reference specifically of first floor. A direct question has been put to the learned counsel for the petitioner as to whether his documents dated 19.12.2006 (relied upon by him to claim title to the suit property) refer to the second floor to which his candid reply is that they are restricted to the first floor alone. This by itself answers the submission of the learned counsel for the petitioner that a

dishonesty has now crept in the mind of the plaintiff and by placing reliance on para 7, he is trying to extract the portion of a property which actually does not belong to him. The site plan had depicted both the first and the second floor but the specific prayer in the plaint is for a decree of possession qua the first floor which has also been depicted in the site plan; the site plan may have shows both the floors but the prayer is specific i.e. for the possession of the first floor alone. The impugned judgment had noted all these facts in the correct perspective.

At this stage, it is also relevant to note that at the time when the RFA No. 404/2012 had been preferred by the defendant before the High Court, the plaintiff was represented through his counsel. Even at that point of time, the plaintiff did not raise any such objection. That apart the plaintiff cannot have a better title than that what is documented and his whole case is premised on his registered agreement to sell, Will, receipts etc dated 19.12.2016 all of which only make reference to the first floor alone.

This petition seeking correction in the judgment is nothing but an abuse of the process of the Court and which has been filed malafide. It is accordingly dismissed with costs quantified at Rs.50,000/-.

INDERMEET KAUR, J

FEBRUARY 11, 2016

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