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

+ CM(M) 940/2016

PREM PRAKASH & ORS

..... Petitioners

Through

Mr.Ravi Sikri, Sr.Advocate with
Ms.Sonia A.Menon & Mr.Deepank
Yadav, Advocates

versus

SHAKUNTALA DEVI & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.09.2016

CM No. 34490-92/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) No. 940/2016 & CM No. 34489/2016

1. By the present petition, the petitioners seek to impugn the order dated 20.07.2016 by which, on the basis of the objections filed by the respondents, the trial court framed issues in the execution proceedings.
2. A suit for possession, damages and *mesne profits* was filed by Sh.Baldev Singh Sethi against Sh. Surya Kumar regarding property bearing No.1443A, Wazir Nagar, Kotla Mubarakpur, New Delhi. During the pendency of the said suit, it is the contention of the petitioners that Sh.Baldev Singh Sethi sold the suit property to the present petitioners. It is pointed out that the said sale took place vide three registered sale deeds in the year 2012. The registered sale deeds are on record. The petitioners thereafter became a party to the suit. After having become a party to the suit,

they entered into a compromise with their tenant Sh.Surya Kumar on 30.09.2013. The payment of Rs.6 lacs was also made to Sh.Surya Kumar who undertook to handover the vacant possession of the suit property to the petitioner by 15.10.2013. It is also stated that one Sh.Pratap Singh, father of the respondents moved an application under Order 1 Rule 10 of the CPC but no order was passed on the same.

3. Subsequently, the petitioners sought to execute the concerned decree dated 30.09.2013. The bailiff was appointed in the matter and as per report of the bailiff, the petitioners took over the vacant possession of the suit property on 30.01.2014.

4. Now objections have been filed by the respondents for restoration of the possession who claim themselves to be legal heirs of Sh.Pratap Singh. It is their claim that they have been continuously in possession of the suit property for the last 40 years and that they have been dispossessed on the basis of a fraudulent decree.

5. The learned senior counsel appearing for the petitioners has pointed out that Sh.Pratap Singh, the predecessor of the respondents had filed a suit earlier in 2010 where Sh.Baldev Singh was the defendant. It was clearly stated by him that he was the owner of the property and that Sh.Surya Kumar is a tenant. Instead of pursuing the suit, the suit was dismissed as withdrawn after filing of the objections. Thereafter, Sh.Pratap Singh moved an application under Order 1 Rule 10 CPC on which no order was passed in view of the compromise arrived at between the parties on 30.09.2013. Based on this, it is averred that now the respondents have come up to file frivolous objections only to delay the proceedings. It is further urged that finding recorded by the impugned order in para 20 that both the parties do not have

a chain of title documents to prove their ownership is incorrect as the title documents namely registered sale deeds of the petitioners are on record.

6. A perusal of the impugned order shows that the trial court has concluded that no title documents are available with the parties. Issue of right title or interest is claimed by the applicant which has to be examined first. Hence, the issues have been framed. It is obvious that material averments have been made by the petitioners which had not been dealt with by the trial court in the impugned order. The fact that predecessor of the petitioner has filed a suit, and application under Order 1 Rule 10 CPC has not been noticed. The title documents filed by the petitioner have not been noticed.

7. The order suffers from an error apparent on the face of the record. Accordingly, liberty is granted to the petitioners to file a review petition against the said order within ten days from today. In case, such review is filed within the said period the trial court may deal with the said petition in accordance with law.

8. The trial court is directed to dispose of the review petition within four months from the date of filing of the same. In case any of the parties wants to file additional documents, liberty is also granted for the same.

9. The petition stands disposed of in above terms. All the pending applications also stand disposed of.

10. A copy of this order be given *dasti* under the signature of the court master to the learned counsel for the petitioners.

JAYANT NATH, J.

SEPTEMBER 20, 2016/v