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

+ CM(M) 1026/2016

JAGMOHAN KHERA Petitioner
Through Mr. Mohit K Gupta, Advocate

versus

GOPAL KRISHAN KHERA Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
05.10.2016

1. By the present petition, the petitioner seeks to impugn the order dated 30.09.2016 by which the trial court has issued warrants of possession in respect of the suit property with necessary police aid with directions for the bailiff to break open the locks, if needed.
2. The matter is fixed before the ACJ on 06.10.2016 for appointment of bailiff.
3. The history of litigation shows how an unscrupulous litigant can misuse the process of court. The dispute is between two brothers. On 20.09.1950, Sh. S N Khera, the father of the parties was given a plot admeasuring 200 sq yards bearing no. 207-221, Lajpat Nagar, Delhi by the Govt. of India. On 19.01.2001 Sh. S N Khera expired leaving behind three sons and four daughters. The petition does not disclose as to how the dispute revolves around only two sons. After the demise of the father the respondent filed a probate case seeking probate of Will dated 11.03.1999 of

the deceased father. On 25.04.2003 the respondent also filed a suit for possession of the suit property. Vide order dated 21.08.2008 the probate petition was allowed. Challenging the said order, the petitioner filed an appeal bearing FA (O) 407/2008 which was dismissed as withdrawn on 03.03.2011 with liberty to the petitioner to file a separate probate petition in respect of Will dated 19.12.2000 and to seek revocation of the probate granted on 21.08.2008. The petitioner has filed the new probate petition for Will dated 19.12.2000 and for revocation.

4. On 02.02.2013 suit for possession filed by the respondent was decreed. Against the said decree, regular first appeal was filed which was dismissed on 15.12.2014. Regular second appeal was dismissed on 29.06.2015 and thereafter Special Leave Petition was dismissed on 23.09.2016. Hence, the decree of possession passed in favour of the respondent has attained finality.

5. In the meantime I go back to the probate petition filed by the petitioner. Having filed probate / revocation petition, the petitioner has also filed a suit for declaration of title which was dismissed as withdrawn on 01.03.2015.

6. Not satisfied, the petitioner has after dismissal of the SLP on 23.09.2016 filed the present application before the court where he has filed for revocation of probate granted seeking injunction. The trial court issued summons returnable for 13.10.2016 and has not exercised its jurisdiction in favour of the petitioner.

7. It is clear that the petitioner having lost the suit for possession right upto Supreme Court cannot be allowed to continue to obstruct the decree. Petitioner cannot be permitted to continue to keep agitating in this manner.

There is no error in the impugned order.

8. Petition is accordingly dismissed.

JAYANT NATH, J.

OCTOBER 05, 2016/v

