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

+ CM(M) 1047/2016

DALEL SINGH (SINCE DECEASED) THR LRS..... Petitioner
Through Mr.Saurabh Kirpal, Mr.A.Hassan,
Mr.Venkita Subramaniam T.R., Mr. Rahat Bansal
and Mr.Arunav Tewari, Advocates.

versus

LAXMAN (SINCE DECEASED) THR LRS & ORS..... Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **20.10.2016**

CM No. 38466/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 1047/2016 and CM No. 38467/2016 (stay)

1. The present petition is filed under Article 227 of the Constitution of India to impugn the order dated 14.10.2016 passed by the executing court by which two applications filed by the petitioner i.e. one filed under Section 151 CPC for modification of order dated 16.07.2014 and another filed under Order 21 Rule 29 CPC were dismissed.
2. Learned counsel for the petitioner at the outset submits that he only challenges the order dismissing the application of the petitioner under Order 21 Rule 29 CPC.
3. Some of the brief facts are that the respondents had filed a suit for

possession of land being Khasra No. 736 measuring 5 Bighas in village Munirka, Delhi. One of the objections raised by the petitioner in the suit, on which an issue was framed, was as to whether the suit land was exchanged by the father of the respondents with a land with the father of the petitioner in 1917. In essence the contention of the petitioner/defendant in the said suit was that the petitioner's father owned a property being part of Khasra No. 748 and the respondents' father owned Khasra No. 736. There was a transfer of the two lands whereby the petitioner came into possession of Khasra No. 736 and the respondents came into possession of Khasra No. 748.

4. The trial court rejected the contention of the petitioner noting that the petitioner has failed to prove the exchange of land and also declined to hold that the petitioner has become owner by way of adverse possession of land being part of in Khasra No. 736. On 01.05.1976, a decree of possession was passed in favour of the respondents for the said property being part of Khasra No. 736. The petitioner filed a Regular First Appeal against the said judgment. On 17.02.1979, the RFA filed by the petitioner was also dismissed. The petitioner thereafter filed a Regular Second Appeal which was pending before this court. During the pendency of the said RSA, the petitioner filed a suit against the respondents for permanent injunction seeking an injunction against the respondents from transferring, alienating, creating any third party interest or disposing of the suit property which is a part of Khasra No. 748 which as per the petitioner was originally owned by them but was transferred to the respondents in lieu of the property which the petitioner is now occupying i.e. Khasra No.736.

5. In the meantime, the RSA filed by the petitioner was dismissed by this court on 19.02.2013. This court in the said order upheld the findings

recorded by the trial court that there was no evidence on record to prove that the Khasras had been exchanged as is sought to be pleaded. The SLP filed against the said order filed in the Supreme Court was also dismissed.

6. By the present application filed under Order 21 Rule 29 CPC, it was sought that the execution of the present decree be stayed till the suit of the petitioner filed in 2005 is disposed of. The trial court by the impugned order dismissed the application stating that the suit filed by the petitioner pertains to Khasra No. 748 and pendency of the said civil suit has no bearing on the present execution petition which is in respect of the Khasra No. 736.

7. Learned counsel appearing for the petitioner has strenuously urged that there are errors in the orders passed by this court in RSA inasmuch as the Khasra girdawari and other revenue records were available on record and have been ignored. He further submits that the trial court has wrongly dismissed the present application inasmuch as it wrongly noted that the suit filed by the petitioner pertains only to Khasra No. 748 and does not involve Khasra No. 736. As an alternative plea, he submits that the matter has been mentioned in the Supreme Court and is likely to be taken up some time in October itself. Hence, he prays that till the Supreme Court hears the application filed by the petitioner, the petitioner may be protected as the petitioner has been in possession of the property being Khasra No. 736 since 1917.

8. The issue has to be closed at some stage. The decree for possession has been passed in favour of the respondents on 01.05.1976. The decree is awaiting execution despite lapse of almost 40 years. The first appeal and the second appeal have been dismissed. Each court has rejected the contention of the petitioner regarding exchange of lands of two khasras. Even SLP has

been dismissed.

9. As far as the pendency of the suit filed by the petitioner is concerned, the relief sought in that suit is of permanent injunction. Possession of Khasra No. 748 is not sought. No relief is prayed in the said suit regarding Khasra No. 736. The impugned order rightly noted that no relief against Khasra No. 736 is sought in the suit filed by the petitioner. Hence, there are no grounds to stay the execution and the trial court rightly dismissed the application of the petitioner.

10. There is no merit in the present petition of the petitioner. The petition is accordingly dismissed.

11. Copy of the order be given dasti under the signatures of the Court Master as prayed for.

JAYANT NATH, J

OCTOBER 20, 2016
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