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

+ C.R.P. 198/2016 and CM No. 45445/2016

ISHWAR SINGH Petitioner
versus

UNIVERSITY OF DELHI & ANR Respondents

+ C.R.P. 188/2016 and CM Nos. 43492-93/2016

ISHWAR SINGH Petitioner
versus

UNIVERSITY OF DELHI & ANR Respondents

+ C.R.P. 189/2016 and CM Nos. 43514-15/2016

ISHWAR SINGH Petitioner
versus

UNIVERSITY OF DELHI & ANR Respondent

Present: Mr. Apoorv Jain and Mr. Rakshith Srivastava, Advocates for
the petitioner.
Mr. G.K. Pathak, Advocate for DU.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **15.12.2016**

1. By the present petitions filed under Section 115 of the Code of Civil Procedure (CPC), the petitioner seeks to impugn three orders each dated 02.07.2016. By the said orders three applications filed by the petitioner

under Order 1 Rule 10 CPC, Section 151 CPC and Order 26 Rule 9 CPC respectively were dismissed.

2. The petitioner has filed the suit for permanent injunction claiming that he is the owner and in exclusive vacant and peaceful possession of the property bearing No. Khasra No. 126 admeasuring 1 Bigha 8 Biswa and Khasra No. 135 admeasuring 1 Bigha 12 Biswa in Village Dhaka, Delhi. It is the claim of the petitioner that he is in uninterrupted peaceful cultivatable possession of the suit property since prior to 1969. The respondent/University of Delhi has in the written statement stated that they have taken over possession of 62.90 Acres of land from DDA on 25.03.1988 but unauthorised cultivation and encroachment has not been cleared by DDA in spite of various letters/communications. It is further stated that on 02.05.2000 some unauthorised occupants had broken a portion of South End of the wall which later reconstructed on 03.05.2000. It is contended that the boundary wall was constructed on the land which indisputably belongs to the respondent.

3. The suit was filed in the year 2000 and appears to have been lingering on for various reasons. Till date even issues are said to have not been framed.

4. As far as the application under Order 1 Rule 10 CPC is concerned, by the said application the petitioner sought impleadment of DDA as a respondent. The trial court noted that earlier also the petitioner had moved a similar application for impleadment of DDA which was dismissed on 19.12.2001. Noting that the doctrine of res judicata would also be applicable to the present application, the application was dismissed.

5. Learned counsel appearing for the petitioner has sought to argue that

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DDA is a necessary party as the record of title would be available only with DDA. He submits that in the absence of appropriate record, the petitioner is not able to move forward in the present suit.

6. There is no merit in the contention of the petitioners. The trial court has rightly dismissed the application relying upon the judgment of the Supreme Court in the case of *Arjun Singh vs. Mahindra Kuma*, AIR 1964 SC 993 and other judgments.

7. The petitioner having filed the suit, it is for the petitioner to prove his case. As per Section 101 of the Indian Evidence Act whoever desires the court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that those facts exist. Hence, merely because the petitioner seeks to obtain evidence from DDA would not be a ground to implead DDA as party to the suit. At best DDA may be considered as an appropriate witness. He said application was rightly dismissed.

8. The second application has been filed by the petitioner under Section 151 CPC. This application is filed on 09.05.2000 and has been pending since then. By this application, it is submitted that the petitioner may be permitted to make a passage to the land in question which has been blocked by constructing a boundary wall. In the written statement filed by the respondent, the respondent have pointed out that the petitioner cannot use the passage through the demarcated wall which goes through the girls' hostel. It is further stated that a proposed road has already been constructed giving passage to one side of the unauthorised cultivated land.

9. The trial court noted that in the plaint the petitioner has not made any averment that there is any public way. As primarily the claim of the

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petitioner was based on adverse possession, the real owner as held by the trial court can validly raise wall around such property. Based on this, the application was dismissed.

10. In my opinion, there is no infirmity in the impugned order. The application has been pending since the year 2000 i.e. for 16 years. The petitioner having not been able to access the property for 16 years as claimed cannot now seek interim order in this manner instead of pursuing adjudication of the main suit. In any case, the title claimed through adverse possession would have to be proved in trial and cannot be determined in an interim application.

11. The third application filed was under Order 26 Rule 9 CPC. By this application, the petitioner sought a Local Commissioner be appointed to find the current status of the property. For the reasons stated above, while dealing with the application under section 151 CPC, this application has also rightly been dismissed by the trial court.

12. There is no merit in the present petitions. The same are dismissed. All pending applications also stand dismissed.

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JAYANT NATH, J

DECEMBER 15, 2016

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