

\$~A-56

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

+ **CM(M) 1269/2016 & CM Nos.45758-45759/2016**

SAEED

..... Petitioner

Through Mr.Gaurav Goel, Advocate

versus

NIZAM & ORS

..... Respondent

Through Mr.R.K.Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

09.12.2016

CM No.45759/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 1269/2016 & CM No.45758/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 14.7.2016 of the trial court by which an application filed by him under Order 1 Rule 10 CPC was dismissed.
2. The parties to the present suit are brothers. The suit has been filed by respondent No.2 Abdul Rehman for partition and possession of property situated in Khasra No.12, H.No.59, Village Kalu Sarai, New Delhi. The property was purchased by the brothers by joint sale deed.
3. A preliminary decree was passed on 10.4.2015. After passing of the preliminary decree the petitioner who is the son in law of respondent No.3, has now filed an application under Order 1 Rule 10 CPC stating that he has purchased the terrace of the suit property from respondent No.1 on

6.11.1998 i.e. even prior to filing of the suit. The title documents relied upon are unregistered Agreement to Sell, power of attorney etc.

4. The trial court by the impugned order noted that a preliminary decree has already been passed. It noted that an application for addition of the parties cannot be allowed after preliminary decree is passed except in exceptional circumstances and dismissed the application.

5. Learned counsel for the petitioner relies upon judgment of the Supreme Court in *Dhanlakshmi & Ors. vs. P.Mohan & Ors. AIR 2007 SC 1042* to contend that even in cases where preliminary decree is passed and title has passed to the party in part, the preliminary decree can be set aside and the applicant would have the right to be impleaded as a party.

6. Learned counsel appearing for respondent No.1 has, however, pointed out that respondent No.1 had been fraudulently made to sign some blank documents at the time when the sale deed was executed in favour of the parties. These blank documents have now stated to be converted into an alleged sale documents of the terrace. He submits that the applicant has been set up by respondent No.3 who is his father in law. The suit has been pending since almost 16 years. At this belated stage the petitioner/applicant has woken up to file the present application.

7. In my opinion, there are no reasons to interfere with the impugned order. Respondent No.1 who is alleged to have sold the terrace property has vehemently denied having made any such sale. The documents are unregistered. Even the consideration is paid in cash. This Court in *Indira Rai vs. Bir Singh, 176 (2011) DLT 301* noted that ordinarily in a transaction for sale of an immovable property at least part payment is made by way of demand draft/cheque so as to obtain an authentic documentary proof of the

payment. The documents prima facie do not inspire any confidence. Even otherwise the petitioner is the son in law of respondent No.3 and no explanation is forthcoming as to why he has chosen to file the application 16 years after filing of the suit and that too after passing of a preliminary decree.

8. The Supreme Court in *Dhanlakshmi & Ors. vs. P.Mohan & Ors. (supra)*, was dealing with a case in which admittedly the applicant had purchased undivided share of some of the respondents. It is in those circumstances that the Supreme Court had directed that the applicant would be a necessary party and had set aside the preliminary decree. In the present case there are serious doubts on the bona fide of the petitioner and the documents relied upon by him. Accordingly, the said judgment would not apply to the facts of the present case.

9. There is no merit in the present petition. For the reasons stated above, there is no reason to interfere in the impugned order. The petition is accordingly dismissed. All pending applications, if any, also stand disposed of. Nothing said herein shall prejudice the petitioner in any other proceedings that he may choose to file.

JAYANT NATH, J

DECEMBER 09, 2016

n