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

+ CM(M) 864/2015 and CM No.19654/2015

DHARAMPAL & ORS

..... Petitioners

Through

Mr. Alok Bhachawat and Ms. Tavishi
Chandra, Advocates

versus

RENU & ANR

..... Respondents

Through

Mr. Amarjit Singh, Advocate for R1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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05.09.2016

1. By the present petition, the petitioner seeks to impugn the order dated 6.6.2015 by which the application filed by the petitioner/defendants No.2 to 7 under Section 45 of the Indian Evidence Act was dismissed.
2. The plaintiff/respondent has filed the present suit for recovery of possession, arrears of rent and recovery of damages and mesne profit.
3. As per the plaint, the plaintiff/respondent is the owner of the suit property and defendant No.1 Smt. Kusum was the tenant. Later on defendant No. 2 to 4 were impleaded as parties. It is the contention of the plaintiff/respondent that the defendants have colluded with each other and want to grab the property of the respondent.
4. The petitioner moved the present application under Section 45 of the Indian Evidence Act. The prayer in the application reads as follows:-

“Therefore it is requested before this Honble Court to appoint/allow to appoint Map expert/professional OR Architect as to ascertain whether or not the Sale Deed dated 17.08.2006 and the site plan annexed with the plaint by the plaintiff, belongs to one and the same piece of Land/Plot/Premises.”

5. The trial Court noted that the Issues were framed in the present case on 03.09.2013 and no Issue was framed with regard to the fact that the location of the suit property is not as per the site plan filed by the plaintiff. The trial court further held that it is not clear from the application or the arguments of the petitioner as to how an architect/expert witness shall opine by looking at the documents on record that the suit property existing on the site is different from what was shown in the site plan. The application was accordingly dismissed.

6. Learned counsel for the petitioner submits that what was actually required to be done was for the Architect to be appointed to visit the site physically and determine whether the site plan filed by the plaintiff/respondent is at par with the description of the property in the Sale Deed. The application nowhere makes such a request which is now made by the petitioner. It is also not clear as to what is sought to be achieved by the said relief that the petitioner is seeking, namely, appointment of architect/expert witness to visit the site and determine as to whether the site plan filed by the respondent is in consonance with the description of the property in the Sale Deed. Even the written statement filed by the petitioner has not been placed on record. The suit is an eviction petition. How the said exercise advances the case/stand of the petitioner is not known.

7. In the absence of cogent reason, as to why such an order should be passed by the Court, there are no reasons to interfere with the impugned order passed by the trial court. The present petition is dismissed.

JAYANT NATH, J.

SEPTEMBER 05, 2016/'raj'