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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1138/2015 & C.M. No.27463/2015
PANNA LAL KHARORIA & ORS

..... Petitioners

Through Mr. R.K. Sharma, Mr. R.R. Saini and
Ms. Dezy Gaur, Advs.

versus

DHARAMSHALA PHOOL MALI TRUST

..... Respondent

Through Mr. Ram Kishan Saini, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.02.2016**

The petitioner is aggrieved by the order dated 08.09.2015 vide which his application under Order VIII Rule 9 of the CPC for filing an additional written statement had been declined. This was rightly so. The contention before the Trial Court was that the certain new facts have been introduced by the plaintiff in his replication; replication was admittedly filed on 03.03.2008. The present application seeking permission to file an additional written statement was filed on 04.04.2014. There is no explanation for this gap of six years. To a candid query put to the learned counsel for the petitioner, his submission is that the counsel had changed and he was unaware of the nuances of the new facts having been introduced in the replication. Apart from the fact that, this explanation is wholly unjustifiable, this Court has also examined the replication and the new facts which were sought to be introduced by the plaintiff in the replication.

To answer this query, it would also be necessary to examine the

suit. The present suit is a suit for possession which has been filed by the petitioner trust; the case of the plaintiff is based on a registered gift deed which was executed on 07.12.2007 by defendant No.1 in favour of the plaintiff trust. This is admittedly a registered document. Defendants No. 1 to 3 are the three defendants before the Trial Court of whom defendant No.1 had purportedly executed this gift deed in favour of the plaintiff trust. The petitioner before this Court is defendant No.3 in the Trial Court. His defence in the written statement is that defendant No.1 in the year 1991-1992 by virtue of a General Power of Attorney transferred this property in favour of his wife (defendant No. 2) who in terms of another registered Power of Attorney and agreement to sell dated 14.06.2006 had sold this property to defendant No. 3. Defendant No. 3 is the nephew of defendants No. 1 & 2. This was the defence which was raised by defendant No. 3 in the Trial Court. In the replication in answer to this defence raised by the defendant, it was stated that defendant No.1 (namely Brij Lal) was the son of Umrao Singh; Umrao Singh on his death had left behind his wife and three sons and two daughters. It is this fact which has been given in the replication which has been highlighted by the learned counsel for the petitioner/defendant No. 3 to support a submission that these are new facts which have been introduced in the replication which require an additional written statement to be filed and accordingly the present application was filed seeking permission of the Court to file the additional written statement.

The Trial Court had correctly noted these facts. Apart from the

wholesome delay in filing the application as admittedly the replication was filed in March, 2008 and the present application came to be filed in April, 2014; these are even otherwise not new facts which have been mentioned in the replication. It was only a narration of facts i.e. the family status of defendant No.1 was stated and who could be better aware of this family status than defendant No. 3 himself who was the nephew of defendant No.1. Defendants No. 1 & 3 are closely related and the replication has only recited the family pedigree of defendant No.1. It is thus clear that these are not new facts which have been introduced in the replication.

Reliance by the learned counsel for the petitioner upon 98 (2002) DLT 683 M.L. Gupta Vs. Kripal Singh & Anr. is wholly misplaced; it does not apply to the factual matrix of the instant case in any manner. It only lays down a proposition that replication is a part of the pleading and under Order VIII Rule 9 of the CPC, the Court may require a party to file an additional written statement. This proposition of law is undisputed. The factual matrix being not applicable to the present case, this judgment is of no help to the petitioner.

This petition is an abuse of the process of the Court. It is a tactic to derail the proceedings and not allow the case to progress. This petition is an abuse of the process of the Court. It is accordingly dismissed with costs quantified at Rs.20,000/-.

INDERMEET KAUR, J

FEBRUARY 19, 2016

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