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

\+ CM(M) 111/2017 & CM Nos.3608-09/2017

RAM MEHER (D) TH LRS ..... Petitioner

Through Mr.Mahipal Drall & Mr.Abhishek Nanda, Advocates

versus

MUKESH & ANR ..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% 08.02.2017

1. By the present petition filed under Article 227 of the Constitution of India, the peititoner seeks to challenge the order dated 01.10.2016 by which the application filed by the petitioner under Sections 33 and 35 of the Indian Stamp Act, 1899 *(hereinafter referred to as the 'Stamp Act')* was dismissed.

2. The controversy centres around the sale deed dated 01.08.2001 executed by respondent No.2 in favour of respondent No.1. The sale deed shows that the total sale consideration of the sale deed is Rs.24,000/- on which appropriate stamp duty of Rs.3,120/- has been paid.

3. The learned counsel for the petitioner however, relies upon the cross-examination of DW-1 where DW-1 has stated that he purchased the said plot for a sum Rs.5 lacs. On the basis of the said averments made in cross-examination, the petitioner claims that incorrect stamp duty has been paid on the sale deed dated 01.10.2001. This is so as the sale consideration of Rs.24,000/- as reflected on the sale deed is the basis for calculating the stamp duty whereas it should be Rs.50,000/- which should be the basis to

calculate the stamp duty. Based on that, relief is sought that the document i.e. the sale deed dated 01.08.2001 be impounded.

4. The trial court noted that the law does not provide for any adjudication as to the proper stamp paid on an instrument under Section 33 of the Stamp Act as claimed by the petitioner. Section 33 of the Stamp Act is merely concerned with the examination of the instrument and impounding of the same in case it is not duly stamped. It further held that the document has already been exhibited by DW-1 and no objection as to the admissibility of the said document was raised in its pleadings or even at the time of examination-in-chief of DW-1. Relying upon the judgment of the Supreme Court in the case of Javer Chand v. Pukhraj Surma, AIR 1961 SC 1665, the court held that the exhibit marked cannot now be removed.

5. I have heard the learned counsel for the petitioner.

6. In my opinion, the petitioner wrongly relies upon a stray statement made in cross-examination that the property was purchased for a sum of Rs.5 lacs. This kind of admission can always be explained. The total sale consideration stated in the document is Rs.24,000/- which is the relevant factor for determining the stamp duty. The document has been registered on the basis of the sale consideration mentioned in the sale deed and correct stamp duty has been paid on the same. It is not for the court to start a roaming inquiry into facts which are not stated in the document.

7. There is no merit in the present petition and the same is accordingly dismissed.

JAYANT NATH, J.

FEBRUARY 08, 2017/v