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

+ CM(M) 62/2017 and CM No. 1929/2017

KANTA DEVI & ORS Petitioners
Through Mr. Anil K. Aggarwal and Md.
Imteyaz, Advocates.

versus

ISHWAR SINGH & ORS Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
17.01.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 20.09.2016 and also the consequent order dated 24.11.2016 to allow the petitioner to summon the record of the office of the Sub-Registrar about execution of the sale deed/documents prior to examination of the plaintiffs/petitioners as witness.
2. The petitioners had moved an application under Section 151 CPC seeking permission to file an affidavit by way of evidence only after the witness from the office of the Sub-Registrar concerned has produced the summoned record or made a statement before the court.
3. The plaintiffs/petitioners have filed the suit for specific performance of an agreement to sell dated 17.11.1981 to the extent of 3/5th of the sale transaction and for directions to respondent no.1 to perform the agreement and accordingly transfer 7 Bighas 4-1/2 Biswas from the agricultural land

situated at Village Randhola, Tehsil-Mehrauli, Delhi in favour of the petitioners. The case of the petitioners is that the parties entered into an agreement to sell. The sale deed was executed and presented for registration before the concerned Registrar by the vendor/respondent No. 1. However, the respondents, it is urged, colluded with each other and got the documents presented before the Registrar for the registration, rejected. Thereafter, the respondents in collusion applied and withdrew the documents from the record of the Registrar. Hence, it is urged that prior to filing of the affidavit by way of evidence, the petitioners seek to first summon the concerned person from office of the Sub-Registrar concerned.

4. The trial court dismissed the application holding that the petitioners were not a party to the presentation of the documents before the Sub-Registrar or withdrawal thereof and the averments are in conjectures.

5. In the Review petition, the trial court noted that under Order 18 Rule 3A CPC where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court for reasons to be recorded permits him to appear as his own witness at a later stage. The trial court held that instead of moving an application under Order 18 Rule 3A CPC, the petitioners have moved an application under Section 151 CPC. It also noted that no proper application seeking leave of the court to deviate from the normal procedure has been filed by the petitioners and no requisite permission has been sought at any stage by the petitioners. The review petition was accordingly dismissed.

6. It is clear from the said order dated 24.11.2016 that in the absence of a proper application filed by the petitioners under Order 18 Rule 3A CPC giving cogent reasons, the court was not able to permit the relief which was

being sought by the petitioners, namely, that they may be permitted to lead evidence after the evidence of the sub-Registrar concerned is recorded.

7. In my opinion, it is appropriate that the petitioners be given liberty to file a application under Order 18 Rule 3A CPC. In case any such application is filed within two weeks from today, the trial court may deal with the same as per law uninfluenced by any observations made by this court.

8. With the above observations, the present petition is disposed of.

9. All pending applications also stand disposed of.

10. Dasti.

JAYANT NATH, J

JANUARY 17, 2017

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