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

+ CM(M) 429/2015

AJAY KUMAR & ANR Petitioners

Through: Mr.J.S.Maan, Advocate

versus

HARKH BAHADUR GURUNG Respondent

Through: Mr.D.K.Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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08.05.2017

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1. Civil Suit No.128/2013 has been filed by Harkh Bahadur Guraung against his own son Ajay Kumar, defendant No.1 and Nisha Guraung, wife of Ajay Kumar, defendant No.2. The relief claimed in the Civil Suit is for decree for possession, mandatory injunction and permanent injunction.

2. In the written statement the petitioners/defendants have taken specific plea in para no.1 of reply on merits that the said house is built up upon a Government land which could not have been sold or purchased by the private parties.

3. The petitioners has invoked the extraordinary jurisdiction of this Court vested under Article 227 of the Constitution of India by impugning the order dated 6th February, 2015 passed by the learned Civil Judge whereby the application filed by the petitioners/defendants in Civil Suit No.

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128/2013 for placing on record the reply received from Delhi Cantonment Board under RTI Act has been declined.

4. Learned counsel for the petitioners submits that the reply has been received by the petitioners on 7th November, 2014. This document was not in power and possession of the petitioners hence could not have been placed on record at appropriate stage. Learned counsel for the petitioners has also submitted that to demolish the case of the respondent/plaintiff, who has claimed himself to be the owner of the suit property, it is necessary to place information obtained under RTI Act on record to prove that suit property is constructed on Government land.

5. Learned trial Court has declined the permission to place on record information obtained under RTI Act observing that this fact was within the knowledge of the petitioners/defendants even at the stage of filing of written statement as this plea has already been taken. Learned trial Court has also observed that this document is otherwise not necessary for pronouncing the judgement on merits.

6. The issue arising for consideration in this petition is whether the learned trial Court has rightly declined the permission to the petitioner to place on record information under RTI Act on 7th November, 2014.

7. The document sought to be placed on record is the reply furnished by Delhi Cantonment Board, Delhi Government with reference to the application dated 9th October, 2014 filed by Sh.J.S.Maun, Advocate who is counsel for the petitioners/defendants. Thus, it is not that the petitioners/defendants had obtained this information under RTI Act but obtained by their counsel Sh.J.S.Maun, who is also representing them before this Court.

8. The information furnished under Right to Information Act does not qualify to be a document because it is a mere answer to a question put to the authority by a citizen. The information given under Right to Information Act are based on examination of the office record and the information stored therein. Thus, information furnished under the RTI Act is not a document of original information nor can be termed as secondary evidence of the original document.

9. The information obtained under Right to Information Act cannot be used to prove the contents of the documents. Under Section 91 of the Indian Evidence Act such facts can be proved by the documents itself and not by the information received under the RTI Act. Section 91 of the Indian Evidence Act reads as under:-

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents – When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1- When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2 – Wills [admitted to probate in [India] may be proved by the probate.

Explanation 1 – This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2 – Where there are more originals than one, one original only need be proved.

Explanation 3 – The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.”

10. In view of above discussion, the impugned order does not call for any interference by this Court in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India.

11. The petition is dismissed.

12. No costs.

CM No.8660/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 08, 2017

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