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

+ C.R.P. 140/2017 & CM No.22831/2017 (for stay)

OM PRAKASH PANWAR (DECEASED) & ORS Petitioners
Through: Mr. Narender Malawaliya, Adv.

Versus

OM PRAKASH TYAGI (DECEASED)
THROUGH LRS Respondent
Through: Mr. A.K. Sen, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

25.07.2017

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1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 29th March, 2017 in CS SCJ No.83161/2016 of the Court of Senior Civil Judge (SCJ) (South), Saket Courts, New Delhi) of dismissal of an application filed by the petitioners/plaintiffs under Section 151 CPC for seeking opinion of the expert on the document dated 8th March, 2010.

2. The petition was entertained and notice thereof ordered to be issued and passing of final judgment in the suit stayed.

3. Yesterday when the matter came up before this Court, the counsel for the petitioners/plaintiffs sought adjournment. The counsel for the respondent/defendant contended that the suit is part heard before the Trial Court and owing to the *ex-parte* order dated 3rd July, 2017, the proceedings are held up. Accordingly, the petition was posted for today.

4. The counsels have been heard.
5. The position which emerges is as under:
 - (i) that the document, on which the petitioners/plaintiffs wanted the opinion of the expert, is an office copy of the objections claimed to have been filed by the respondent/defendant in the office of the Tehsildar, Hauz Khas, New Delhi on 8th March, 2010 and which objections purport to bear the receiving stamp of the Tehsildar office of 16th March, 2010;
 - (ii) that the aforesaid document was not filed by the respondent/defendant before the Trial Court;
 - (iii) however, during the cross-examination by the counsel for the respondent/defendant of PW-7 of the petitioners/plaintiffs, being Sh. Ajit Singh, Tehsildar, Saket, the counsel for the respondent/defendant confronted him with the said document;
 - (iv) the relevant part of the proceedings in this regard is as under:

“At this stage, witness has been confronted with certified copy of the objection filed in the office of Tehsildar Hauz Khas dated 08/03/2010 having receiving stamp of Tehsildar office of 16/03/2010, which has now been exhibited as cross Ex. PW-7/D1. The document have been objected by the Ld. Counsel for the plaintiff as not part of the judicial record.

The document is taken on record in view of proviso of order 7 rule 14(4), as certain documents can be withheld by the opposite counsel for the purpose of cross examination.

I have no personal knowledge of the action taken over the aforesaid objections filed by Sh. Om Prakash Tyagi.”

(emphasis added)

6. I have enquired from the counsel for the parties, whether the respondent/defendant in his own evidence has proved the said document.
7. Both the counsels state that the respondent/defendant in his own evidence has not proved the document on which Ex. PW-7/D-1 has been put.
8. I have then enquired, as to the need for the petitioners/plaintiffs to seek expert opinion on the aforesaid document when to me it appears that the document though given exhibit mark has not been proved in accordance with law.
9. The counsel for the respondent/defendant states that PW-7 has deposed that Ex. PW-1/D1 is part of the record of Tehsildar office.
10. However, that is not so recorded.
11. The counsel for the respondent/defendant has drawn attention to the underlined portion of the deposition aforesaid.
12. However what is recorded therein is observation/order of the Court and not the deposition of the witness. The witness PW-7 has nowhere stated that Ex. PW-7/D1 is a copy of the original of the document on the record of the file of the Tehsildar. Rather, the witness has stated that he has no personal knowledge of the action taken over the said objection, which was shown to the witness.
13. In fact, it is found that the learned SCJ erred in giving an exhibit mark to the document without the same having been proved.
14. Be that as it may, it is the settled position in law (see *Sait Tarajee Khimchand Vs. Yelamarti Satyam alias Satteyya* (1972) 4 SCC 562 & *Sudir Engineering Company Vs. Nitco Roadways Ltd.* MANU/De/0414/1995) that putting an exhibit mark on the document is

proof of the document, it is clarified that the document on which Ex. PW-7/D1 is put has not been proved and is not part of evidence.

15. Once it is so, the occasion for the petitioners/plaintiffs to have expert opinion thereon, does not arise.

16. With the aforesaid, the petition is disposed of.

Copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

JULY 25, 2017

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