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

+ CM(M) 215/2017 & CM Nos.7086-7088/2017

RAJENDER PRASAD PAWAR & ORS. Petitioners
Through Mr.Madhu Sudan Bhayana &
Mr.Manish Sharma, Advocates

versus

RAM KALI & ORS Respondents
Through Mr.Manoj Kumar Bhanoti, Advocate
for R-1 to R-4
Mr.P.N.Bhardwaj, Advocate for R-5

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
01.03.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 27.10.2016 by which their application filed under Section 151 CPC for leading additional evidence was dismissed.
2. The property in question is said to have been owned by two brothers, namely Sh.Badle Ram and Sh.Ram Pal. The petitioners/plaintiffs are the LR's of Late Sh.Badle Ram and respondents No.1 to 4 are the LR's of Late Sh.Ram Pal.
3. The present suit is filed for declaration and injunction. It is contended that there were mutual understanding between the petitioners and respondents No.1 to 4 whereby respondents No.1 to 4 had relinquished their title and interest in the ancestral property in favour of the petitioners. It is

stated that respondent No.5 now claims to have purchased the said property from respondents No.1 to 4. The stand of the petitioners is that as a settlement had taken place between them and respondents No.1 to 4, respondents No.1 to 4 could not execute a sale deed in favour of respondent No.5.

4. By the present application, the petitioners submit that respondent No.4 was a minor when the sale deed dated 06.07.1984 was allegedly executed by respondents No.1 to 4 in favour of respondent No.5. Hence, they seek to place on record two documents pertaining to the age of respondent No.4 and to lead appropriate evidence to prove these documents.

5. The trial court by the impugned order dismissed the application holding that a party may be allowed to produce additional evidence when it could not produce the same at the time it was leading evidence, but the party must satisfy the court that it could not produce evidence even after exercise of due diligence. In the present case, the evidence of the petitioner was closed on 22.10.2013. Now the petitioners seek to produce two certificates of respondent No.4 after a gap of 6 months. The matter remained at the stage of PE for more than 14 years. Accordingly, the court dismissed the application.

6. I have heard the learned counsel for the parties.

7. The learned counsel for the respondents has strenuously opposed the present petition pointing out that the suit was filed in 1998 and the issues were framed in 1999. The matter was pending for the evidence of the petitioners from 16th December, 1999 to 13th April, 2012. He submits that the evidence of the contesting defendant, namely respondent No.5 is also over. He also submits that the case was fixed for final arguments when this

application has been moved.

8. It is no doubt true that the delay is writ large in the matter in moving this application by the petitioners. However, fact remains that in the plaint filed by the petitioners, a clear averment has been made that respondent No.4 has date of birth of 04.01.1971 and he was a minor on the date of alleged execution of the sale deed dated 06.07.1984. It is also a fact that the petitioners sought to confront these documents to DW6/1. However, the trial court rejected the said request by an order dated 21.04.2015 holding that a witness cannot be confronted in cross-examination without previous production of documents as per law. Against the said order dated 21.04.2015, the petitioners had filed a petition being CM(M) No.647/2015. They withdrew the same with liberty to move appropriate application before the trial court seeking permission to confront these documents to DW6/1 by order dated 21.01.2016.

9. However, the documents in issue have a material bearing on the issue at hand. Instead of moving the said application, the petitioners have now moved the present application.

10. It cannot be disputed that these documents are relevant for the issue which has been raised in the present proceedings. Further, perusal of the documents would show that they have been issued by the Govt. Co-Ed. Senior Secondary School, Ghitorni, New Delhi. Hence, they have been generated by the school run by the Govt. of NCT of Delhi. These facts have been ignored by the trial court while passing the impugned order. Hence, the order suffers from material irregularity.

11. Keeping in view the above facts/documents; in the interest of justice, the petitioners are given one last opportunity to produce the original

certificates issued on 27.05.1987 and 28.03.2014. He will also summon the concerned officer of the same to produce the relevant Register/record where there is any entry of the date of birth of respondent No.4.

12. This permission is given to the petitioners subject to payment of costs of Rs.15,000/-. It is also made clear that the petitioners will not take any adjournment on the date when the matter is fixed for their further evidence. They will ensure summon are served on the concerned officer diligently. The petitioners are at liberty to move appropriate application to summon the witness before the trial court.

13. The petition and all the pending applications disposed of as above.

14. *Dasti.*

JAYANT NATH, J.

MARCH 01, 2017/v