

\$~25

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

+ CM(M) 1207/2017 & CM No.38804/2017(stay)

KESHWATI & ANR Petitioners

Through: Mr. Ankit Gupta, Adv.

versus

SUMARTI DEVI SINCE (DECEASED) THRE LRS & ORS

..... Respondents

Through: Mr.L.B. Rai & Mr. Vijay, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

%

30.11.2017

By order dated 21.09.2017 which is impugned by the petition, the Additional District Judge declined the application under Section 151 of the Civil Procedure Code, 1908 (CPC) and another Order VI Rule 17 CPC moved by the petitioner who is the plaintiff of the suit whereby decree of specific performance of the agreement is sought against the first respondent, the second respondent having been impleaded as *proforma* defendant. The case had reached the stage of plaintiff evidence. But, it came to the fore that in the pleadings, there is deficiency in the description of the subject property, reference being made only to house/plot no. with dimensions added and locality generally described as New Usmanpur, Village Usmanpur, Shahdara, the properties or roads abutting the sides having been vaguely mentioned.

By the applications in question, the plaintiff wanted to describe the property more efficiently, with additional reference to the site plan. The Additional District Judge has observed that the suit property is clearly identifiable from the agreement to sell. This was not the correct approach. It is the description of the property in the plaint which is to guide the consideration of such application. In view of the deficiencies in the description of the property, the applications should have been allowed.

Ordered accordingly.

Both the petition and the applications are allowed. The amended plaint and the site plan shall be taken on record but before proceeding further, respondents will be given an opportunity to file written statements in answer to the amended plaint.

The petition stands disposed off with these directions.

R.K.GAUBA, J

NOVEMBER 30, 2017/umang