

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 459/2016, CM APPL. 25140/2016 & CM APPL. 25141/2016**
AMIT RAJ Appellant
Through: Mr. Sukumar Pattjoshi, Senior
Advocate with Mr. Sanjeet Trivedi
and Mr. Hemant Gupta, Advocates.

versus

MADAN LAL & ANR Respondents
Through: Mr. B.P. Sharma, Advocate for Mr.
Pramod Lohiya.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **21.05.2018**

The present appeal arises out of the impugned judgment and order dated 31st July, 2013. The Plaintiff filed a suit for eviction and possession against Mr. Madan Lal and Mr. Vipin Kumar in respect of a portion of property no. 2730, Naya Bazar, Delhi -06, consisting of one room, attached small room, latrine(W/C) and bathroom on the first floor (*hereinafter `suit property`*).

The suit came to be dismissed on 31st July, 2013 by the impugned judgement. After the passing of the impugned judgment, the Defendants, have vacated the suit property. However, it is the case of the Plaintiff that one Mr. Pramod Lohiya has now trespassed into the suit property and in March, 2016 a complaint was also lodged with SHO, Police Station, Lahori, Delhi-110006.

The only issue raised by Mr. Sukumar Pattjoshi, learned senior counsel for the Appellant, in this appeal, is that the finding as to lack of title on Issue No.2 should not be held against him in any other proceedings especially because Mr. Pramod Lohia has trespassed into the property and the Appellant wishes to avail of legal remedies against him. He further submits that the mutation in the Appellant's favour has already been carried out but the same could not be produced before the Trial Court.

On 10th January, 2018, notice was issued to Mr. Pramod Lohiya. On 20th February, 2018, none appeared for Mr. Pramod Lohiya. However, the Appellant sought to place on record the mutation document showing ownership in his favour. Thereafter, on 13th April, 2018, counsel for Mr. Pramod Lohiya appeared in the matter and sought time to take instructions as to in what capacity he had come into possession of the suit property. Today Mr. B.P. Sharma has put an appearance for Mr. Pramod Lohiya and submits that he has no instructions but he will file an affidavit.

Be that as it may, the main dispute between the Appellant and the Respondents in this appeal is no longer open for adjudication as the Respondents have already handed possession to the Appellant. Thus, no further orders are called for in this appeal.

The Appellant is, however, at liberty to take whatever remedies are available against the new occupant Mr. Pramod Lohiya, in accordance with law. It is open to the Appellant to file all documents to prove his title in such proceedings and all defences of Mr. Pramod Lohiya remain open.

The findings in the impugned judgement, subject matter of the present appeal shall not come in the way of the Appellant, in any proceedings against

Mr. Pramod Lohiya.

The appeal is disposed of with these observations.

PRATHIBA M. SINGH, J.

MAY 21, 2018

Rekha