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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1076/2018 Cav 826/2018 and CM APPL. 36899-36900/2018

HEM CHAND JAIN Petitioner
Through: Mr.Manish Bansal, Advocate

versus

BALJEET SINGH Respondent
Through: Mr.Deepender Hooda and Ms.Jyoti,
Advocates

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **12.09.2018**

1. Learned counsel for the respondent on advance notice has appeared. In reply to a specific query it has been informed on behalf of either side that the person arrayed as defendant no.2 to the Civil Suit, Mahavir Parshad Jain, has already been deleted from the array of parties.

2. Vide the present petition, the petitioner assails the impugned order dated 1.8.2018 of the learned Trial Court of the Additional District Judge (South-West) in CS No. 392/2017 whereby an application under Order VII Rule 14 (3) CPC filed by the petitioner, i.e., the plaintiff to the said suit was declined observing to the effect that the plaintiff has not been diligently pursuing this case and thus there was no indulgence required to be granted especially when the plaintiff examined seven witnesses and the testimony of the plaintiff was on the verge of conclusion.

3. Vide the application that had been filed before the learned Trial Court, the plaintiff i.e., the present petitioner sought to place on record the following:

i) Certified copies of Mutation no.56 of year 1948 regarding mutation of suit land by Roshan Lal to owners of M/s Desh Hit Company namely Nand Kishore, Pandit Raghubir Singh Lala Banwari Lal, Chaudhary Nand Ram and Lala Yad Ram, Khatoni of year 1951-52 and Certified Copies of Jamabandi of year 1948-49 along with their translated copy.

ii) Khatoni of year 1968-69 and 1969-70 of Roshan Mandi, Najafgarh, Masoodabad, Delhi showing Abadi, Kot, Ihata, Sadkey, Railen, Rasta, Jaat Ityadi.

iii) Field book of Roshan Mandi showing consolidation of old Khasra numbers to new Khasra no. 52, Roshan Mandi, Najafgarh, Delhi along with its translated copy.

iv) Certified Copies of Mutation Entry no.72 (in Urdu Language) along with English translation.

4. The suit filed by the plaintiff i.e., the present petitioner herein is one for possession, mandatory injunction, permanent injunction and damage/mesne profits now against the sole defendant i.e., the respondent to the present petition, which seeks relief in relation to the subject plot No.3-4, Roshan Mandi, Najafgarh, Masoodabad, New Delhi-110043, and portion plot Nos. 5-6, Roshan Mandi, Najafgarh, Masoodabad, New Delhi, stated allegedly to have been encroached by

the defendant to the said suit.

5. As per the averments made in the plaint vide paragraph thereof, it was submitted as under:-

“That the present suit concerns with the defendant no.1 with respect to the plot bearing no.3-4 measuring 480 Sq. Yds. Having size 36’X 120’, forming part of Khasra No.52, situated at Roshan Mandi, Najafgarh, Masoodabad, Delhi (hereinafter referred to as “subject plots”) more specifically shown in colour RED in the site plan annexed hereto and portion of approximately 4 ft. encroached by the defendant no.1 of the adjacent plots no.5-6 forming part of Khasra No.52, situated at Roshan Mandi, Najafgarh, Masoodabad, Delhi, more specifically shown in colour BLUE in the site plan marked as ANNEXURE-1.”

6. The defendant No.1 to the said suit now the sole defendant in the said suit in preliminary objections No.1 stated *inter alia* to the effect which reads as under:

“The ownership rights and title claimed by the plaintiff in the suit property/subject plots on the basis of said documents is misconceived. In addition to this, the plaintiff claims ownership on the subject land i.e. Khasra No.52, Roshan Mandi, Masoodabad, Najafgarh i.e., the subject matter of the present suit. However, the documents filed by and relied upon by the plaintiff do not mention and do not pertain to Khasra No.52, Roshan Mandi, Masoodabad, Najafgarh i.e., the suit property/subject plots. Moreover, even the revenue records pertaining to the suit property do not mention plaintiff’s name. The suit filed by the plaintiff is thus

liable to be dismissed with exemplary costs.”

to contend that the plaintiff, i.e., the present petitioner had claimed ownership on the subject land Khasra No.52, Roshan Mandi, Najafgarh, the subject matter of the suit but that the documents filed and relied upon by the plaintiff did not mention and did not pertain to the Khasra No.52, Roshan Mandi, Najafgarh and the name of the plaintiff was also not so indicated through the revenue records that had been placed on record by the plaintiff, i.e., the present petitioner herein and that the copies of the said documents which had been placed on record on behalf of the petitioner to the present petition, indicate the absence of the khasra number in the documents that had been submitted in relation to the perpetual lease deed of residential land Volume 2568 Book No.1 at page 152 of the present petition and likewise also qua the documents placed at page 122 onwards with reference to page 123 of the perpetual lease deed at Volume No.2552 Book No.1 of the Sub-Registrar's office.

7. It has been submitted on behalf of the petitioner that the documents that had been placed on record by the petitioner in relation to the lease deed show the number of the Khasra of the plot in suit to be at Khewat No.1, Khatauni No.1, 22 and 64, Khasra Nos. 1/86(2-19). 89 (7-15), 87(11 Biswa), 1/72 (10 Biswa), 1/73 (5 Biswa), 99 (27) 90(2-14), total area admeasuring 41-14, situated at land area of village Masoodabad, Delhi State as per Jamabandi 1944-45.

8. It has been submitted on behalf of the petitioner that during the course of the cross-examination of the plaintiff witnesses PW1 Hem

chand and PW-2 Mahavir Parshad Jain apparently who is stated to have been arrayed initially as defendant No.2 to the said suit and examined by the plaintiff after deletion from the memo of parties as PW-2, in view of the suggestions that had been put forth on behalf of the defendant in relation to the aspect that the documents that had been placed on record of the revenue record had not stated that the documents pertained to Khasra No.52 and that the same had been categorically denied, during the course of cross-examination of PW2 whilst denying the said suggestions put forth on behalf of the defendant that the documents filed by the plaintiff did not pertain to the defendant No.2 stated that earlier it was Khasra No. 86/87/88/90 and 72 and 73 and later on the same were consolidated and a new number was given as Khasra No. 52.

9. It was admitted on behalf of the plaintiff through the witness of the plaintiff, i.e. PW-2 that no document pertaining to the said consolidation proceedings had been placed on record.

10. It has been submitted on behalf of the petitioner as was urged through the application under Order 7 Rule 14(3) CPC Order 16 Rule 1 CPC filed on behalf of the plaintiff that the said documents which were sought to be placed as mentioned through paragraph 2 of the said application were necessary for the adjudication of the suit in view of the cross-examination conducted of PW1 and 2 and that the said document assisted in bringing forth the contentions of the plaintiff for the consolidation of all the khasra numbers 86,87,88, 90, 72 -73 to become a new khasra no. 52 and also the aspect of non-construction there on as per the lease deed dated 7.9.1948. It was further submitted

through the said application that the need of placing of such documents arose only after the cross-examination of PW1 and 2 of the present petitioner in as much as the revenue records were inspected and thereafter the said documents on the records have been obtained which were not in possession of the plaintiff and thus were not filed at the time of the filing of the said suit.

11. It has further been submitted through the application and contended on behalf of the counsel for the petitioner that the said documents are public documents which records are maintained by public authorities and their genuineness can be assessed during trial and no prejudice would be caused to the defendant and if the documents are brought on record, the same would assist the Court in adjudicating the matter to arrive at a correct conclusion in the matter.

12. It was further contended that the documents at serial no. (iv) was inadvertently not filed in as much as the translated copy of the said mutation entry No.72 (Urdu to Hindi translation) has already been placed on record and the document mistakenly in lieu of Mutation Entry No.71 already Ex.PW-1/9 (Colly) erroneously was placed whereas the mutation entry was one at mutation No. 72 which should be exhibited as Ex.PW-1/9 (colly).

13. On behalf of the respondent i.e. the sole defendant to the said Suit No. 392/2017 pending before the learned Additional District Judge (South-West) Delhi, the application has been vehemently opposed submitting to the effect that despite the specific contention raised by the respondent through the written statement that the plaint did not contain any document in relation to Khasra No.52 qua the suit

property, and that the documents that had been filed by the plaintiff also did not bear the number of the Khasra as 52, the plaintiff chose not to place the said documents on record which are stated to be the revenue records, despite the ample opportunities available to the plaintiff and that the plaintiff cannot now be permitted to place the said documents on record. *Inter alia* reliance is placed on behalf of the respondent on the verdict of the Hon'ble High Court of Jharkhand at Ranchi, in ***Amulya Kumar Singh Son of Raghubans Kumar Singh v. Marwari Relief Society***; dated 24.04.2018 in Writ Petition (Civil) No. 430/2012 in support of the contentions of the defendant vide which it has been observed to the effect:

“6.Order VII Rule 14 C.P.C provides that the plaintiff shall produce document at the time of presentation of the plaint upon which his claim is founded (refer sub-rule1), and if the document is not in his possession he shall disclose in whose possession the document is (refer sub-rule2). No doubt under sub-rule 3 to Rule 14 of Order VII C.P.C a document which ought to have been produced can be admitted in evidence, however, powers under sub-rule 3 must be exercised in the context of the pleadings of the parties and subject to conditions under sub-rule1 and sub-rule 2 to Rule 14 of Order VII CPC.”

14. It has been submitted on behalf of the respondent, i.e., the defendant to the said suit that the facts and circumstances of the instant case are in *pari materia* with the facts and circumstances of the case relied upon on behalf of the respondent ***Amulya Kumar Singh*** (Supra) in as much as the power of attorney sought to be placed on

record by the plaintiff of the said suit in that case, had not been brought on record despite a contention raised by the defendant of that suit through the written statement and no steps had been taken by the plaintiff for bringing the said document on record and despite the defendant having challenged the alleged power of attorney in relation to the person who had instituted the suit, the averments in the plaint did not disclose any reference to documents mentioned in the application under Order VII Rule 14 CPC.

15. It is essential to observe that each case has to be determined on its own facts. The power of attorney stated to have been executed in the case relied upon on behalf of the plaintiff of the said suit in Amulya Kumar Singh (Supra) is a document executed by an individual. In the instant case the documents that plaintiff seeks to place on record form part of the public record qua which the veracity cannot be disputed except in accordance with law in as much as there is a presumption that all official acts had been appropriately performed.

16. Taking the same into account as the documents that plaintiff seeks to place on record relate to the aspect that the Khasra number is 52 as stated through the testimony of the plaintiffs' witness PW-2 and as averred through the plaint forms part of consolidated Khasra No.52 as per the revenue record, taking the same into account it is considered appropriate to allow the prayer made by the plaintiff, i.e., the petitioner herein seeking to place on record the documents at serial No. (i) to (iv) as per application under Order VII Rule 14 CPC read with Order XVI Rule 1 CPC dated 27.1.2018 with an opportunity

being granted to the plaintiff to produce the said witness in relation to the said documents before the learned Trial court subject to payment of costs of Rs.40,000/- to the defendant on the date of trial fixed.

The petition and the accompanying applications are disposed of accordingly.

ANU MALHOTRA, J

SEPTEMBER 12, 2018/SV