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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th January, 2018

+ CM(M) 1406/2017 and CM APPL.45048/2017

MADAN GOPAL SINGH

..... Petitioner

Through: Mandeep Singh Vinaik,, Advocate
with Ms. Anjali Sharma, Mr. Deepak
Bashta, & Mr. Manish Lamba,
Advocates

versus

MAHINDER KAUR (DECEASED) THROUGH LRS & ORS

..... Respondents

Through: Mr. Vishal Maan, Advocate for R-1 to
R-5.
Mr. Arvind Chaudhary, Adv. with Ms.
Asha Chaudhary, Adv. for R-6 & R-7.
Mr. Sunil K. Mittal, Adv. with
Mr. R.K.Sachdeva, Adv. & Mr.
Anshul Mittal, Adv. for R-8 to R-11.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioner is the plaintiff in the civil suit (CS No.10322/2016) pending on the file of the Additional District Judge, South-East, it having been instituted in 2005 for the relief of specific performance, vis-à-vis the agreement of sale of immoveable property. The parties went to trial on the issues being framed in the suit on 21.08.2007. The plaintiff examined himself as a witness and his cross-examination stood concluded on 03.08.2010.

2. The case had reached the stage of final arguments when the plaintiff, through an advocate, newly engaged at that stage, moved an application under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking opportunity to lead additional evidence and to recall himself as a witness for further examination on the basis of some additional documents. The said application was dismissed by Additional District Judge by order dated 10.08.2017.

3. The abovesaid order was challenged by the petitioner by CM(M) No.979/2017 before this court. The petition was dismissed on being found devoid of merit by order dated 08.09.2017. It may be noted that this court affirmed the reasons set out by the Additional District Judge in the order dated 10.08.2017 dismissing the said application, the note whereof may be extracted as under:-

“....i) that the suit was instituted as far back as in the year 2005 for the relief of specific performance of an agreement of sale of immovable property; ii) that the issues were framed in the suit on 21st August, 2007; iii) that the petitioner / plaintiff availed several opportunities for leading his evidence; iv) that the only ground for seeking to lead additional evidence and to examine the petitioner / plaintiff again, was by laying the blame on the earlier counsel not knowing the law and having not placed the material before the Court inspite of the same being handed over to him; v) that the earlier counsel did not conduct the case properly; vi) that the cross-examination of the petitioner / plaintiff was completed on 3rd August, 2010; vii) that it is not as if the petitioner / plaintiff is an illiterate person or otherwise not able to understand the nature of the case or what all he was

required to produce; he is a businessman, residing in a posh residential colony of South Delhi; viii) that the petitioner / plaintiff was not handicapped by his age also, inasmuch as at the time of deposition he gave his age of 53 years; ix) that though the earlier counsel was sought to be blamed but merely by making an averment and no action even has been taken against the counsel who was sought to be blamed; x) that an advocate is the agent of the party; xi) that the petitioner / plaintiff by placing the documents and leading additional evidence was wanting to commence the trial de-novo after the suit had remained pending for over 12 years.”

4. It is conceded at the hearing by the counsel for the petitioner that the order dated 08.09.2017 of this court was sought to be assailed by special leave petition before the Supreme Court but the said petition has since been dismissed.

5. Against the above backdrop, the petitioner, as plaintiff of the suit, moved yet another application, now invoking the provisions contained under Order VII Rule 14 read with Section 151 CPC seeking to place on record the same very documents as had been referred to in the previous application under Order XVIII Rule 17 CPC. The Additional District Judge considered the said application and dismissed the same by order dated 27.11.2017 imposing costs of Rs.25,000/- to be shared equally by the defendants. It is the said order which is brought in question by the petition at hand.

6. During the hearing the counsel for the petitioner was asked if the prayer under Order XVIII Rule 17 CPC as made by the previous application respecting certain set of documents, has been dismissed by the trial court on 10.08.2017, and which order has been affirmed by

this court on 08.09.2017, the special leave petition against which has also been dismissed by the Supreme Court, what purpose would it serve if the same are allowed to be brought on record under the cover of Order VII Rule 14 CPC. The counsel submitted that the purpose of placing on record such material would be to persuade the trial court to take a view thereon and pass necessary orders in their light, this in the hope that the opposite party would be admitting such documents.

7. The above logic does not lead the petitioner anywhere. The averments show the respondents do not admit the documents. What could not be done directly cannot be allowed to be done indirectly. The move for additional evidence to be allowed to be adduced on the basis of this very set of documents having been repelled, there is no purpose served by burdening the record with such material as would remain extraneous and inadmissible.

8. The petition is wholly frivolous and, therefore, dismissed with costs of Rs.50,000/- to be shared by the respondents.

9. Pending application also stands disposed of.

R.K.GAUBA, J.

JANUARY 11, 2018

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