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

+ CM(M) 63/2016

JAGDISH & ORS

..... Petitioners

Through: Ms. Suman Chaudhary, Advocate.
versus

ROHTASH SHARMA & ANR

..... Respondents

Through: Mr. Vipin K. Singh, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **15.01.2018**

1. By the impugned order dated 24.09.2015, the Civil Judge declined the application under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC) of the petitioners seeking opportunity for cross-examination of Sarup Singh i.e. the second respondent who had appeared as defence witness No.4 (DW-4).

2. The suit in the course of which the said order was passed was instituted by the first respondent, who claims to have purchased the subject property from the said second respondent (DW-4), the case of the petitioners as defendants No.2 to 12 before the trial court being that such sale was improper, illegal and unauthorised. The petitioners claim to be co-owners of the subject property with the second respondent.

3. After some hearing, the learned counsel for the first respondent, who is the plaintiff in the suit, fairly concedes that the impugned

order may be set aside and the prayer for recall of DW-4 for cross-examination for and on behalf of the petitioners may be allowed, in as much as there is a conflict of interest between the said two sets of parties. It may be noted that the second respondent though served in these proceedings has not appeared.

4. In view of above, the petition is allowed. The impugned order is set aside. The learned trial Judge shall recall DW-4 Sarup Singh and afford an opportunity to the petitioners through counsel for his cross-examination. Further suitable consequential orders for securing the presence of DW-4 shall be passed by the learned trial Judge.

5. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J

JANUARY 15, 2018

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