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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 59/2016 & CM 2135/2016

KRISHAN KUMAR JINDAL

..... Petitioner

Through: Mr. J.P. Sengh, Senior Advocate with
Mr. Rakesh Kumar, Ms. Manisha
Mehta, Ms. Vaishali Tanwar and
Ms. Mrigna Shekhar, Advocates.

versus

DDA & ORS

..... Respondents

Through: Mr. Arun Birbal, Advocate for DDA.
Ms. Mini Pushkarna, Standing
Counsel, NDMC with Ms. Anushruti,
Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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23.02.2018

1. The civil suit (CS no.696/14) in which the impugned order was passed on 26.09.2015 by the civil judge, as is impugned by the petition at hand, was initially instituted in 1997 by Hari Ram Gupta, predecessor-in-interest of fourth to eighth respondents.

2. It appears the petitioner was impleaded as a co-plaintiff on his application under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) being allowed by order dated 01.08.2011. The suit seeks reliefs in the nature of declaration and injunction – prohibitory and mandatory, qua a certain parcel of land. The first to third respondents herein are the prime defendants against whom decree is sought.

3. It appears during the course of the proceedings, directions were given by the civil judge by order dated 19.07.2005 for demarcation of the land in question to be carried out. A report came on record respecting the demarcation conducted earlier but it was found to be not satisfactory or acceptable. Pursuant to further directions, a fresh demarcation was carried out and a report dated 09.09.2014 was submitted. The contesting defendants filed objections to the said report which were considered by the civil judge, the objections being found to be correct and, thus, by order dated 26.09.2015, the civil judge held the demarcation report dated 09.09.2014 to be faulty and incorrect and set it aside. It is the said order which is under challenge by the petition at hand.

4. Having heard the learned counsel on both sides and having gone through the record, this Court is of the view that the case cannot be put in a vicious circle the way it has been done. The contentions of the petitioner, the co-plaintiff of the suit, are that the survey and the demarcation exercise was appropriate. Objections, if any, to such exercise could and should have been handled at the stage of final adjudication in the light of other evidence on record. If DDA has some documents or records to substantiate the grounds on which it takes exception to the exercise and the report or the authorisation of the person who carried out the same, it can always refer to them at the stage of final analysis.

5. In these circumstances, the petition is disposed of with observations that the contentions of both sides vis-a-vis the report

dated 09.09.2014 are reserved to be agitated at the time of final adjudication.

6. The observations of the civil judge in the order dated 26.09.2015 will not be construed as final expression of opinion on merits. In case DDA so desires, it can always approach the civil judge for yet another exercise of demarcation.

7. The petition and the application stand disposed of with these observations.

R.K.GAUBA, J.

FEBRUARY 23, 2018

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