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

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Judgment delivered on: 16.10.2019

+ C.R.P. 164/2018 & CM APPL. 31832/2018

NAGENDER KUMAR & ANR

..... Petitioners

versus

ANITA TIWARI

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Divakar Kumar, Adv.

For the Respondent: Mr.Mansoor Ansari, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 10.05.2018 whereby the application of the petitioners under Order 18 Rule 17 for recall of the Witness and permission to lead further evidence to prove certain documents has been dismissed.

2. Subject suit was filed by the respondent for recovery of possession, arrears of license fee and mesne profits contending that respondent is the owner of the subject property. It is contended that the subject property was licensed to the petitioners on a monthly license fee of ₹4000/- which was subsequently enhanced to ₹4500/- for the purposes of having a regular watch and ward over the property.

3. Written statement was filed by the petitioners contending that petitioner No.2 is the owner of the subject property. After the evidence of the parties was concluded and matter was at the stage of final hearing, subject application under Order 18 Rule 17 has been filed by the petitioners contending that petitioners could not exhibit certain documents in their evidence affidavit which was filed before the Court. It is contended that the mistake was bonafide and unintentional.

4. Learned counsel for the petitioners contends that the documents which were sought to be exhibited are material and necessary and have a direct bearing on the issues arising in the subject Suit.

5. The documents which are sought to be exhibited are (1) birth certificates of the children of the petitioners, (2) a complaint to the SHO dated 17.02.2010 wherein it is alleged that a theft had taken place in the house of the petitioners and a suitcase containing certain documents had been misplaced and (3) copy of a khatauni of the year 1980-81.

6. The Birth certificates that are sought to be produced by the respondent show that though the date of birth of the children is mentioned as 15.01.1999; 03.10.2000 and 29.02.2004, the date of registration mentioned in the birth certificates is 09.04.2013 which is after the filing of the suit. Clearly the petitioner has sought to register the births of his children giving the residential address of the subject property as an afterthought, after the filing of the suit and apparently

to create a paper trail. Even if the children are born in the subject property, it would not establish any ownership rights.

7. With regard to the police complaint, it is seen that the complaint does not refer to any particular document or document of title that have been allegedly stolen but it merely makes a vague allegation that a theft had taken place and *“a suit case was not available in which some of my necessary documents, horoscope of my children, documents of my building, paper of gas connection, some jewellery of Silver and five six pair of clothes.”*

8. The above complaint does not give detail or description of any document or establish that documents of the subject property have been lost. Learned counsel for the petitioners very candidly admits that petitioners does not have even the photocopy of the documents which are alleged to have been lost and there is no recorded transaction of any payment having been made through any banking channel or of any of the documents having been registered.

9. Further submission of the learned counsel for the petitioners is that there is an electricity connection in the name of the petitioners in this property, this is countered by learned counsel for the respondent contending that petitioner had obtained the electricity connection by forging certain documents for which a complaint has already been made.

10. Be that as it may, merely because an electricity connection is

obtained by a person who is admittedly in possession does not establish that the person is or was an owner of the subject property.

11. It is clear that petitioners by the subject application seek to fill up the lacunae in the evidence of the witness which has already been recorded. No valid ground has been mentioned by the petitioners as to why the said documents were not tendered in the evidence affidavit. Further as noticed above, I do not find that bringing on record the above documents will in any manner have any bearing on the issues in the Suit as the said documents do not even prima facie establish that petitioners have any ownership rights in the subject property.

12. I find no infirmity in the view taken by the Trial Court that petitioner has not shown any valid or sufficient reason meriting exercise of discretion to recall the witness and permitting him to file his additional affidavit.

13. Further as pointed out by learned counsel for the respondent that petitioner was cross examined about his title and even during his cross examination, he did not state that he was in possession or was ever in possession of any title document of the subject property.

14. I find no merit in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

OCTOBER 16, 2019/rk