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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1206/2018 & CM APPL. 41049-41050/2018
ASHWANI PARASHAR Petitioner
Through Mr. Ashish Kumar, Ms. Anubha
Dhulia, Advs.

versus

PREM AGGARWAL & ANR Respondent
Through Mr. Jeetebder Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **08.02.2019**

CM APPL. 41050/2018

Exemption allowed subject to all just exceptions.

The application is disposed of.

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Vide the present petition, the petitioner assails the impugned order dated 13.08.2018 of the Trial Court of the learned Civil Judge, (West), THC, Delhi vide which an application under Order 7 Rule 14 r/w Section 151 of the CPC filed on behalf of the plaintiff of the suit, arrayed as the respondent to the present petition, seeking to place on record the conveyance deed dated 13.03.2018 was allowed submitting to the effect that no fair opportunity has been granted to the petitioner to controvert the said document and furthermore, the said application could not have been allowed to be taken on

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record at the stage at the time when it was so permitted vide the impugned order dated 13.08.2018. It has been submitted on behalf of the petitioner that the suit as instituted by the plaintiff i.e. the respondent herein was one for recovery of possession and mesne profits as averred in para-2 of the plaint which reads to the effect : -

“That Plaintiff permanently reside at the aforesaid given address, and by virtue of contemporaneous documents, being Agreement to Sell, General Power of Attorney and Will, duly executed and thereafter registered on the 15.11.2007 before the Sub-Registrar Office, by Ms. Mridula Garg R/o F-421 (Ground Floor), Greater Kailash, Part-II, New Delhi, have acquired ownership right, title, indefeasible and inviolable interest in the property / flat bearing no. 19-A, Mandakini Enclave, VIP Block, Gate No. 7, Alaknanda, hereinafter referred to as the subject property, and as such are within their right to institute the subject suit and cause for the recovery of possession of subject property which is currently in unauthorized and illegal possession of the Defendant”

It has been further submitted on behalf of the petitioner that there was no registered sale deed that had been sought to be brought forth through the averments made in the plaint as initially instituted and the documents on which the suit was based on the basis of the Agreement To Sell, GPA and Will registered in relation to which the defendant had already submitted that the said documents were forged and fabricated. It has been thus submitted on behalf of the petitioner that the issues as framed in the suit on 26.02.2009 were to the effect : -

“(1) Whether the plaintiff has no locus standi to file the present suit against the defendant as the plaintiff is neither the owner nor the landlord of the premises as alleged by him in the preliminary objection No. (b)? OPD

(2) Whether the plaintiff had become the owner of the suit property by the virtue of GPA, Agreement to Sell and Will and accordingly the landlord of the defendant? OPP

(3) Whether the plaintiff is entitled to a decree of possession of the suit property as prayed for? OPP

(4) Whether the plaintiff is entitled for a decree for mesne profits, if yes, at what rate and for what period? OPP

(5) Whether the plaintiff is entitled to interest, if yes, then at what rate and for which period? OPP

(6) Relief”

even submitting to the effect that there was categorically an issue in relation to the aspect of the plaintiff of the said suit having become owners or not of the premises in question.

In reply to a specific Court query, it has been submitted by the counsel for the petitioner that the locus of the petitioner in the premises in the suit is that of a tenant.

The impugned order reflects to the effect that the conveyance deed in relation to the premises i.e. Flat No. 19, Pocket-A, Mandakini Enclave, Alaknanda, New Delhi-19 is indicated to have been registered on 13.03.2018 and it has been observed by the learned Trial court to the effect

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that the document having been prepared on 13.03.2018 and the application for placing the same on record was filed on 07.04.2018 without any delay and taking the same into account it was allowed to be placed on record to be proved by the plaintiff on examining to prove or tendering the evidence the conveyance deed vide one single opportunity granted to the plaintiff to lead remaining plaintiff's evidence to the extent of tendering in evidence the said conveyance deed. It was further observed by the learned Trial Court placing reliance on the verdict of this Court in ***Gold Rock Wrold Trade Ltd. Vs. Vee Jay Laxmi Engineering Works Ltd. (2008), 149 PLR 40*** that the application under Order 7 Rule 14(3) of the CPC can be granted for receiving documents in evidence at belated stage, where the party seeking leave satisfies the Court that the said documents were earlier not within the parties knowledge or could not be produced at the appropriate time despite due diligence.

It has been submitted on behalf of the petitioner placing reliance on the verdict of the Hon'ble Supreme Court in case titled as ***Om Prakash Gupta Vs. Ranbir B. Goyal (2002) 2 SCC 256*** observing in para-12 thereof to contend that without the amendment of the pleadings having been made in relation to the said registered deed, having been brought forth on record, the petitioner has been deprived of an opportunity to controvert the said document.

The petition has been opposed on behalf of the respondent submitting to the effect that the testimony qua the document has already been tendered in evidence through the testimony of the personnel from the Sub-Registrar

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concerned and that the said witness has already been cross-examined by the petitioner herein.

Taking into account the stage of the proceedings and taking into account the factum that the document in question is a registered conveyance deed and taking into account the verdict of the Hon'ble Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr. - 2009 (7) SCC 363* which does not prevent the registration of the sale deed pursuant to a transaction entered into on the basis of the power of attorney and sale agreement, and the factum that the conveyance deed was prepared only on 13.03.2018, it is not considered appropriate to interfere with the impugned order dated 13.08.2018 of the learned Trial Court in the exercise of jurisdiction under Article 227 of the Constitution of India.

However in the interest of justice in relation to the submission on behalf of the petitioner of the said document having been allowed to be placed on record, an affidavit of the petitioner to the extent that the petitioner seeks to controvert the said document to be read as a pleading in the suit is allowed to be filed on the record of the learned Trial Court within a period of two weeks and the defendant i.e. the petitioner herein is permitted to lead evidence only in relation to the extent of confronting the said document if the defendant so seeks to do.

The petition is disposed of accordingly.

Copy of the order be given *Dasti*, as prayed.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

FEBRUARY 08, 2019/MK
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