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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1553/2018

DEEPAK PANDEY & ANR

..... Petitioners

Through: Mr.R.K.Mahto and Mr.A.P.Sah,
Advocates

versus

MUKH LAL & ANR

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **23.01.2019**

CM APPL. No.25688/2018

Exemption allowed, subject to just exceptions.

CM APPL. No. 52690/2018 (condonation of delay)

Along with petition is CM APPL. No. 52690/2018 seeking condonation of two days' delay in filing the petition which is taken into consideration and for the reasons explained in the application, the application is allowed and the two days' delay in filing the petition is condoned.

The application is disposed of.

CM (M) 1553/2018 and CM APPL. Nos.52689/2018

Vide the present petition, the petitioner assails the impugned order dated 25.10.2018 of the learned Trial Court of the Civil Judge-05, Central District, Tis Hazari Courts, Delhi in CSSCJ 98179/16 vide which an application under Order I Rule 10 (2)of the CPC filed by

the petitioners herein seeking to be arrayed as parties to the said suit No. 98179/16 filed by Sh. Mukh Lal, the plaintiff, against the defendant Sh. Rajnikant Goyal was declined, with it having been observed to the effect that all the questions involved in the said suit that had been filed by Sh. Mukh Lal were capable of adjudication without impleading the applicants.

A perusal of the plaint that has been filed in the Suit No. 98179/16 filed by Sh. Mukh Lal indicates that it is a suit for declaration and permanent injunction which has been filed seeking the following prayer:

“A) A decree of Declaration may kindly be passed in favour of the Plaintiff and against the Defendant whereby declaring the documents, got executed by the Defendant from the Plaintiff in his favour in the garb of giving witness, as null & void and non-effective.

B) A decree of Permanent Injunction may please be passed in favour of the Plaintiff and against defendant, his associates, agents and servants whosoever on his behalf, thereby restraining them from entering into the suit property and dispossessing the Plaintiff in any manner from the suit property bearing No. measuring 50 Sq.Yds. part of Khasra No.99/8/1, situated in the revenue estate of Village Palam, colony known as Vishwas Park, Part-II, New Delhi, now known as G-97, Gali No.6, Vishwas Park, Uttam Nagar, New Delhi-59, specifically shown in red colour in the site plan attached with the plaint.”

The averments made in the said plaint are *inter alia* to the effect that the plaintiff of the said suit is the owner of the suit property

measuring 50 sq. yards a part of Khasra No.99/8/1 situated in the revenue estate of village Palam, Colony known as Vishwas Park Part-II, New Delhi which he purchased from one Ramanand S/o Sri Ram on 25.1.1984 and that in the month of April, 2004, the plaintiff was in urgent need of money and was undergoing a financial crisis, thus he requested the defendant to provide him with a friendly loan of Rs.1,00,000/- for two years in relation to which the defendant to the said suit Sh. Rajnikant Goyal had agreed to the same on the conditions that the plaintiff Sh. Mukh Lal would have to deposit all the original title documents in respect of the defendant in relation to which the plaintiff had handed over five duly signed blank cheques as security and the defendant has also agreed to pay a nominal interest @ 8% per annum. It has been submitted through the said plaint that the plaintiff had given his title documents to the defendant of the property in suit and had deposited the same with the defendant and had also given five blank cheques duly signed to the defendant on the re-assurance that they would be returned on payment of the loan amount.

As per the averments made in the said plaint, *inter alia* it has been averred that on 25.12.2006 the plaintiff had contacted the defendant and demanded his title documents and four cheques along with the remaining amount after deducting the dues but the defendant paid no heed to the same and rather claimed that he had become the owner of the property and on 23.1.2007, the defendant along with some musclemen tried to dispossess the plaintiff from his house as a consequence of which the plaintiff had thus sought the relief of grant

of injunction against dispossession against the defendant and his associates as also a restraint against the defendant Sh.Rajnikant Goyal and his associates from entering into the property as also seeking a declaration that the documents of the said suit that the defendant had got executed from the plaintiff were null, void and ineffective.

The petitioner herein to the present petition contends that they had purchased the property from the said Rajnikant Goyal, the defendant of the suit, and that they are the necessary parties to the suit for permanent injunction and declaration filed by Sh. Mukh Lal against Rajnikant Goyal.

Without making any observations in relation to the observations in para 7 of the impugned order dated 25.10.2018 which read to the effect:

“ 7. Coming to the facts of the present case, case of the applicants is that they are necessary parties to the present suit as their father had purchased the suit property from the defendant, during the pendency of the suit. Perusal of the documents filed on record by the applicants show that they base their claim to the suit property on the basis of agreement to sell, GPA, Will, Receipt, Affidavit and possession letter executed in their father i.e. Sh. Chander Shekhar Pandey. It is noticed that the said documents are unregistered documents and that the said documents are only notarized. Section 17 of Indian Registration Act, 1908 provides that transfer of any immovable property can take place through registered documents only. Thus, the documents filed by the applicants, being unregistered documents, do not go on to advance their case that their father had acquired title of ownership over the suit property”,

it is apparent that the present petitioners are not at all necessary

parties to the suit that had been filed by the plaintiff Sh.Mukh Lal against Sh. Rajnikant Goyal, and the defendants if they have any right they may seek the same against Sh.Rajnikant Goyal qua which it has been submitted by the learned counsel for the present petitioners that a civil suit has already been filed against the said defendant. It has however been submitted on behalf of the petitioners that if the suit filed by Sh. Mukh Lal succeeds., the present petitioners would be gravely prejudiced. It is apparent that the present petitioners if they have any remedy then it is only against Sh.Rajnikant Goyal and are not necessary parties at all to the suit No.97169/2016 filed by Sh. Mukh Lal. The petition and the accompanying applications are declined.

ANU MALHOTRA, J

JANUARY 23, 2019/sv