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

*Date of decision: 09.11.2023*

+ CM(M) 1214/2022

RANJANA SETH

..... Petitioner

Through: Mr. Abhishek Chaturvedi, Advocate  
(through VC)

versus

PREM RANI KHANNA

..... Respondent

Through: Mr. Anil K. Bhasin, Advocate

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**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

#### **MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 08.08.2022 passed by ADJ-10, Central, Tis Hazari Courts, Delhi ('Trial Court') in CS No. 14265/2016, titled as **Prem Rani Khanna v. Ranjana Seth**, to the extent it dismisses an application filed by the Petitioner under Order XVI Rule 2, of the Code of Civil Procedure, 1908 ('CPC') for seeking permission to summon the concerned clerk from Sub-Registrar Office, Mehrauli with the record of sale deed dated 03.12.2003.

1.1. The Petitioner is the defendant and the Respondent is the plaintiff, before the Trial Court. The Petitioner is the daughter of the Respondent.

1.2. The civil suit no. 14265/2016 has been filed, inter alia, for seeking recovery of possession of the suit premises, mesne profit and permanent



injunction.

1.3. The Trial Court vide impugned order dated 08.08.2022 has rejected an application filed by the defendant under Order XVI Rule 2 CPC, for summoning the record, the concerned clerk of Sub Registrar Office, Mehrauli to produce the record of the sale deed dated 03.12.2003.

1.4. In this order, the parties are referred to by their rank and status before the Trial Court.

2. The learned counsel for the defendant states on 24.08.2008, the Trial Court had framed an additional issue regarding the valuation and jurisdiction of the suit.

2.1 He states that the defendant in January, 2022 learnt about the sale deed dated 03.12.2003 pertaining to property no. D-15 Geetanjali Enclave situated in the same locality where the suit premises is located.

2.2 He states that since the sale deed dated 03.12.2003 is executed between third parties, the defendant herein had no knowledge about the said sale deed. He states that the said sale deed is relevant for the adjudication of the additional issue regarding the valuation of the suit.

2.3 He states that in the suit the plaintiff has valued the relief of possession at Rs. 15 lakhs and paid ad-valorem court fee; however, it is the stand of the defendant that as per the prevalent circle rate, the market value of the property in the year of the institution of the suit was Rs. 50,64,265/-

2.4 He states that the sale deed dated 03.12.2003 would help the defendant in substantiating the said contention as regards the (improper) valuation of the suit property in the plaint.

2.5 He states that since as on 30.04.2022 when the application under Order XVI Rule 2 CPC was filed, the defendant had not closed her



evidence; the Trial Court ought to have allowed the defendant to summon the official witness.

3. In reply, learned counsel for the plaintiff states that this suit was instituted on 15.11.2006 and the written statement was filed on or before 12.03.2007.

3.1 He states that the additional issues regarding valuation and jurisdiction was framed on 21.04.2008. He states that in the garb of the application filed under Order XVI Rule 2 CPC, the defendant after 14 years in 2022 sought to place on record the sale deed dated 03.12.2003 as an additional document.

3.2 He states that the plaintiff has already concluded her evidence on 14.10.2015 and the cross examination of defendant also stood concluded on 24.03.2022. He states that the matter was at the stage of the final arguments when the defendant filed his application for bringing on record a new document in the garb of summoning the witness.

3.3 He states that the application filed by the defendant is an abuse of process of law and has been rightly dismissed by the Trial Court. He states that it is a matter of record that no list of witnesses was filed by the defendant and therefore, there is no mention of the proposed witness on the record.

4. This Court has heard the counsel for the parties and perused the record.

5. The operative portion of the Trial Court order dated 08.08.2022 reads as under:



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.....

*I have given my due consideration to the submissions made on behalf of the parties. Record perused.*

*Present suit has been filed by the plaintiff for recovery of possession, mesne profit and for permanent injunction. **Perusal of record shows that the evidence of both the parties have already been concluded long back.** During the pendency of present case, admittedly, defendant/applicant never raised any plea with regard to the obstruction allegedly made by son of plaintiff. Even during her examination as witness and cross examination, defendant has not raised any such plea. Since it is the contention of the defendant that she is in possession of the front portion by virtue of deal/ family settlement in 1983-1984. Order for shifting of electric and water meter at this stage may affect the disposal of present case in proper and just manner.*

*Further, the present suit has been filed by the plaintiff on 15.11.2006. Vide order dated 12.03.2007, it has been observed that written statement has already been filed by the defendant. Perusal of record shows that issue with regard to the valuation of suit has been framed on 21.04.2008. The evidence on behalf of the plaintiff as well as the defendant has already been concluded. It is not the case of defendant/applicant that the document in question was missing or not accessible rather the applicant/defendant had stated only that she procured the document during her visit to India that too without mentioning any date or year of visit to India. Now, at this stage when the case comes up final arguments, the plea of defendant that she got the relevant document during her visit to India does not inspire confidence in view of the fact that written statement was filed long back and the relevant issue was framed on 21.04.2008. Further, no list of witnesses comprising the witness named in the instant application has been filed at appropriate stage.*

*In view of the reasons, as stated above, both the applications i.e. application under section 151 CPC for issuance of direction regarding the shifting of electric and water meter of the defendant portion and another under Order XVI Rule 2 CPC for seeking permission to summon witness, both moved on behalf of defendant Ranjana Seth, stand disposed off as dismissed.”*

(Emphasis supplied)

6. The defendant, in this petition, has sought to rely upon the notification dated 18.07.2007 issued Government of India, Revenue Department prescribing the minimum value of the suit property for the purpose of stamp



duty in the year 2006. The perusal of the said averment evidences that the defendant herein had access to the said public record since the year 2007. It is matter of record that the defendant examined herself as defendant witness-1 ('DW-1') and her cross examination was concluded on 24.03.2022.

7. This Court is of the opinion that the defendant had access to the notification dated 18.07.2007 of the Government of India at the contemporary time and omission of the defendant to place the said document on record and prove it in accordance with law is not for any reason beyond her control.

8. No list of witnesses was filed by the defendant and therefore, the concerned clerk of Sub Registrar Office, Mehrauli obviously did not find any mention in the record. For the same reason, the sale deed dated 03.12.2003 also is not a part of the Trial Court record. The contents sale deed dated 03.12.2003 executed between the third parties cannot be proved merely by summoning the record from the office of the Sub-Registrar. It would require the summoning the executants of the said sale deed dated 03.12.2003 to prove its contents and to offer the said witness for cross-examination to the plaintiff. Therefore, no purpose would be served only by summoning the record clerk at this belated stage.

9. In the facts of this case, the suit for possession filed in 2006 has remained pending for 17 years even when the issues stood framed in 2008. This Court, therefore, finds no infirmity in the order of the Trial Court disallowing the application.

10. In the facts of this case, this Court is of the opinion that there has been no failure on the part of the Trial Court to exercise its jurisdiction and therefore, the present petition does not warrant any interference from this



Court in its supervisory jurisdiction.

11. With the aforesaid observations, the present petition stands dismissed.

Pending application(s), if any, stands disposed of.

12. Interim orders stand vacated.

13. The Trial Court is requested to proceed to hear the final arguments. It is further directed that if the Trial Court is of the opinion that the parties are seeking unnecessary adjournments and not cooperating with the Trial Court in the final adjudication of the suit, the Trial Court is requested to exercise its jurisdiction under Order XVII Rule 2 and 3 CPC and decide the suit on the basis of the record.

14. The aforesaid directions for disposal of the suit shall be binding on both the parties.

**MANMEET PRITAM SINGH ARORA, J**

**NOVEMBER 9, 2023/msh/sk**

*Click here to check corrigendum, if any*