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

% Judgment delivered on: 09.01.2023

+ CM(M) 1203/2022 & CM APPL. 48240/2022

CHAMELI DEVI & ORS. Petitioners

versus

LUCKY CHOUDHARY Respondent

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+ CM(M) 1258/2022 & CM APPL. 49828/2022

CHAMELI DEVI & ORS. Petitioners

versus

LUCKY CHOUDHARY Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Ravindra S. Garia, Ms. Ashtha Gupta,
Mr. Shashank Singh, Mr. Rohit Yadav,
Mr. Mitul Sehrawat and Mr. Dushyant
Pratap Singh, Advocates.

For the Respondent : Mr. Vijay Kasana, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. By the present petition, petitioners challenge the order dated 05.03.2020, *vide* which the learned Trial Court had rejected the application under Order VIII Rule 1A(3) and order XVI r/w Section 151

of the CPC, 1908 whereby the petitioner sought to place on record the alleged title documents executed in favour of the predecessor in interest of the petitioner dated 16.08.1982 and also a birth certificate of Master Munesh Kumar S/o Chet Ram dated 31.07.2019.

2. The petitioners also challenge the order dated 21.09.2022 whereby the learned Trial Court had closed the right of the petitioner/defendant to lead further evidence on the ground that several opportunities were granted, which were not availed of by the petitioner herein.

3. Ms. Gupta, learned counsel appearing for the petitioners draws attention of this Court to the application at page 25 of the paper book to submit that the petitioners had named one Mr. D.S. Dalal, notary public, who was stated to have attested the aforesaid alleged title documents, in their list of witnesses and these documents were only to be exhibited through the said witness.

4. She further submits that no prejudice would be caused to the respondent inasmuch as at the time when the application was filed before the learned Trial Court, defendant's evidence was being conducted.

5. Ms. Gupta submits that these documents are central to her contention as the petitioner asserts her title through the aforesaid documents.

6. So far as the impugned order dated 21.09.2022 is concerned, Ms. Gupta submits that the closure of the evidence at the last stage of defendant's evidence without permitting the petitioner to examine the son of Late Mr. D.S. Dalal, the notary, would be prejudicial to the

petitioner.

7. Ms. Gupta submits that as a last opportunity, this Court may consider granting one opportunity to the defendant to examine Mr. D.S. Dalal (the son), notary public as her last witness coupled with the documents which are sought to be brought on record.

8. Per contra, Mr. Vijay Kasana, learned counsel appearing for the respondent submits that the present case is not one where this Court ought to interfere in the impugned orders passed by the learned Trial Court for the reasons that there is no error or illegality apparent on the face of the record shown by the learned counsel for the petitioner.

9. He submits that it is undisputed that the documents which are sought to be brought on record now, pertained to the year 1982, and which, by the assertion of the petitioner, are the title documents establishing her title over the suit property.

10. Mr. Kasana further submits that having regard to the importance of the documents and seeing the lack of explanation regarding the non-production of these documents in the application, there are no good grounds to interfere in the impugned orders.

11. Mr. Kasana, learned counsel also points out to the page 98 of the additional documents placed on record by the petitioner, which is an order dated 22.04.2017 passed by the learned Trial Court whereby after noticing that a number of opportunities were granted to the petitioner to produce witnesses, last opportunity *vide* the said order was granted with a clear understanding that no further opportunity would be granted.

12. Mr. Kasana submits that in view of the aforesaid conduct of the petitioner as well as the orders which speak for themselves, the petition

may be dismissed with heavy costs.

13. This Court has considered the arguments of the learned counsel appearing for both the parties and is of the considered opinion that there is no error or illegality brought forth by Ms. Gupta while the impugned orders were being passed by the learned Trial Court, for this Court to interfere in the present proceedings. Moreover, the documents sought to be produced are of the year 1982 and it is informed that the suit was filed in the year 2001. It has been more than 20 years since the suit has been pending.

14. The Court has also considered the fact that the list of witnesses was filed in the year 2004 by the petitioner/ defendant.

15. Though Late Mr. D.S. Dalal, the notary public, was undoubtedly a part of the list of witnesses sought to be summoned, however, the plaintiff ought to have been more vigilant and diligent in placing on record the said documents pertaining to the year 1982.

16. It is also observed from the written statement that there is no reference either to the documents now sought to be produced of the year 1982.

17. It is informed that the documents as mentioned in the written statement of the year 1985 are already a part of the Trial Court record.

18. The explanation given in the application as well as the arguments rendered today does not instill any confidence in this Court as to why the petitioner did not produce these documents before the learned Trial Court within time.

19. In view of the aforesaid submission, there is no error or infirmity or any material illegality committed by the learned Trial Court by

passing the impugned orders and the impugned orders are upheld, as such.

20. The present petition along with the pending application is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J .

JANUARY 9, 2023/nd

