



2024:DHC:9190-DB



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

+ **FAO(OS) 166/2024 & C.M.No.68852/2024**

DALJIT SINGH AND ANR

.....Appellants

Through: **Mr.Rajesh Rawal, Advocate.**

versus

LT COL DR YASMIN YUSUFZAI AND ORSRespondents

Through:

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Date of Decision: 26th November, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, C.J : (ORAL)

1. Present appeal has been filed on behalf of the appellants/defendant nos.3 & 4, challenging the order dated 28th October, 2024 passed by the learned Single Judge of this Court in Review Petition No.405/2024 & I.A. No.43729/2024 in CS(OS) 1/2022, whereby the Review Petition filed by the appellants seeking review of para 5 of order dated 29th July, 2024 in I.A. No.11687 /2023 in CS(OS) 1/2022 was dismissed on the ground that statement of the appellants recorded on 29th July, 2024 is an accurate representation of the proceedings that were held before the learned Single Judge on the said date. The petitioner has also challenged the said order dated 29th July, 2024.

2. The suit being CS(OS) 1/2022 has been filed on behalf of the respondent no.1-plaintiff seeking reliefs of declarations, mandatory

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injunction and permanent injunction with respect to ground floor, two car parking rights in stilt area along with rear side stilt area measuring 900 sq. ft. with proportionate ownership in S-398, Greater Kailash, Part I, New Delhi (“suit property”).

3. Learned counsel for the appellants states that the learned Single Judge has failed to appreciate that it was never the case of the appellants that they do not dispute the contention of the plaintiff/respondent no.1 *qua* the non-existence of the sale deed dated 18th December, 2013 produced by the appellants in the records of the Sub Registrar. He further states that there was no occasion for the appellants to make a statement that has been recorded in para 5 of the order dated 29th July, 2024. He states that there is a clerical mistake in para 5 of the order dated 29th July, 2024.

4. He states that the fact that District Magistrate, South was directed to hold an enquiry to ascertain the veracity of the allegations raised by respondent no.1 proves that no such statement was made by the appellants. He lastly states that in view of the statement recorded in para 5 of the order dated 29th July, 2024, the defence raised by the appellants will not survive despite their written statement disputing and contesting the stand, claim, contentions of the plaintiff *in toto*.

5. Having perused the paper book, this Court finds that the appellants have conceded before the learned Single Judge that they have not inspected the records of the concerned Sub-Registrar till date. As such, the appellants are not in any position even today to make any statement regarding the existence of the sale deed dated 18th December, 2013 relied upon by them. The appellants ought to have inspected the record of the concerned Sub-Registrar before filing the written statement. If the appellants’ contention



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that the sale deed dated 18th December, 2013 produced by them is a genuine sale deed and exists in the records of the concerned Sub-Registrar, they would have had no difficulty in inspecting the records and producing the said sale deed from the records. However, no such inspection has been done till date, which only proves that sale deed dated 18th December, 2013 produced by the plaintiff/respondent no.1 is genuine.

6. Further, the appellants' contention that the direction to hold an enquiry proves that the non-existence of the sale deed dated 18th December, 2013 was disputed by them, is misplaced. A bare reading of the order dated 29th July, 2024 shows that the learned Single Judge has directed an enquiry with respect to the sale deeds dated 09th July, 2020 and 29th July, 2020 and as such, the same has no bearing on the statement made by them with respect to the sale deed dated 18th December, 2013. In fact, if the appellants had not admitted the allegations made by the plaintiff *qua* the sale deed dated 18th December, 2013 and had disputed the same on 29th July, 2024, the learned Single Judge would have directed an enquiry into the veracity of the said sale deed dated 18th December, 2013.

7. Consequently, the present appeal, being bereft of merit, is dismissed along with the application. However, it is clarified that the other independent defences raised by the appellants, if any, shall be considered on their own merits.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

**NOVEMBER 26, 2024
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