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

+ **CM(M) 3922/2024**

KANTA DEVI

.....Petitioner

Through: Mr. Rohan Akshayy, Mr. Rajinder
Singh Bidhuri, Mr. Naveen Kumar &
Ms. Sanskriti Bidhuri, Advs.

versus

DINESH KUMAR

.....Respondent

Through: Mr. Vikas Sethi, Adv

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

27.11.2024

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CM APPL. 69256/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 3922/2024 & CM APPL. 69255/2024 (Stay)

1. The petition challenges the impugned order dated 29.10.2024 passed by learned Civil Judge – 02, South East District, Saket Court, Delhi in *CS SCJ-52847/2016* whereby the application filed by respondent under Order XXVI Rule 9 CPC was allowed by the learned Trial Court.
2. Issue notice.
3. Learned counsel representing the respondent accepts notice.
4. With consent of both the parties, the matter has been taken up for final disposal.
5. The petitioner is the plaintiff before the learned Trial Court. She filed



a suit under Section 31 of the Specific Relief Act, 1963 seeking declaration that the defendants property documents are null and void due to forgery. The respondent filed his written statement. Issues have already been framed by the learned Trial Court on 29.01.2018.

6. While the case was at the stage of plaintiff's evidence, an application was filed by the respondent under Section 151 CPC for status quo.

7. He also filed an application under Order XXVI Rule 9 CPC which was allowed by the learned Trial Court vide order dated 29.01.2018 and appointed the Local Commissioner, with direction to submit the report on the following terms:-

"1) Whether the documents i.e. GPA, Agreement to Sell, Affidavit, receipt, Possession Letter, and Deed of Will dated 06.12.2008 allegedly executed by defendant no. 2 in favour of defendant no. 1 with respect to plot no. 38, gali no. 18, Lakhpat Colony, Part-II, Meethapur Ex. Badarpur, are entitled to be declared as null & void? OPP.

2) Whether the suit is not maintainable in the present form being Simplicitor suit for declaration without any consequential relief? OPD-1.

3) Whether the suit is not maintainable being hit by Order 2 Rule 2 CPC ? OPD-1.

4) Whether the suit is barred by limitation? OPD-1."

8. Learned counsel for the respondent submits that it is the respondent who is in the possession of the suit property and petitioner who has been trespassing onto the same and therefore, for maintaining status quo with regard to the possession, the respondent had filed the application under Order XXVI Rule 9 CPC and the Local Commissioner has been appointed solely for the purpose to clarify the status of possession and the construction existing in the suit property.



9. Per contra, the learned counsel for the petitioner has submitted that previously the respondent had filed a Suit for Permanent Injunction against the defendant which already stands dismissed vide judgment dated 09.09.2016 and in the said judgment, the learned Trial Court had categorically returned the finding that there was nothing on record to prove the possession of the respondent in the suit property.

10. The Perusal of the learned Trial Court Record reveals that the plaintiff's suit is under Section 31 of the Specific Relief Act, only seeking declaration regarding the defendant's property documents to be null and void. None of the issues framed by the Court is with regard to the possession, in the suit filed by him.

11. The petitioner has not claimed possession in the suit filed by him. There being no issues with regard to the possession, there was no compelling circumstance with the Trial Court for appointment of Local Commissioner for ascertaining the possession and the status of the construction.

12. The Court, is therefore of the view that impugned order appointing the Local Commissioner, under the facts and circumstances of the case is not sustainable. Accordingly, the petition is allowed and the impugned order dated 29.10.2024 is set aside.

RAVINDER DUDEJA, J

NOVEMBER 27, 2024

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