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

+ **C.R.P. 248/2024**

BRIJESH

.....Petitioner

Through: Mr. Harish Chandra and
Mr. Tarun, Advocates.

versus

BUGLI DEVI @ BOOGLI
DEVI & ORS.

.....Respondents

Through: None.

+ **C.R.P. 250/2024**

SHEELA & ANR.

.....Petitioners

Through: Mr. Harish Chandra and
Mr. Tarun, Advocates.

versus

BUGLI DEVI @ BOOGLI
DEVI & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.01.2025

CM APPL. 49380/2024 in C.R.P. 248/2024 (Exemption)

CM APPL. 49543/2024 in C.R.P. 250/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 248/2024 & CM APPL. 49379/2024 (Stay)

C.R.P. 250/2024 & CM APPL. 49542/2024 (Stay)

3. The present petitions are filed challenging the order dated 23.07.2024, pursuant to which the application filed by the petitioners under Section 45 of The Indian Evidence Act, 1872 ('Evidence Act') seeking forensic examination of the thumb impressions on disputed documents, was dismissed.
4. The respondents, claiming to be legal heirs of late Shri

C.R.P. 248/2024 & C.R.P. 250/2024

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Chandan Singh, filed a suit seeking possession of the suit premises being property no. M-59, Gali No.14, Brahmpuri, Delhi-110053, and recovery of rent and damages against the petitioner, asserting ownership based on a General Power of Attorney (GPA), Agreement to Sell (ATS), and receipts dated 17.12.1973, allegedly executed in favour of Chandan Singh by the original owner, Sukh Devi.

5. The petitioners, Brijesh and Sheela, claimed possession of the suit premises based on oral agreements made with Sukh Devi in 1973, wherein they allege that payments were made in consideration for the subject property, granting them continuous possession. They dispute the validity of the documents relied upon by the respondents, asserting that these are forged and were never executed by Sukh Devi.

6. The petitioners filed applications under Section 45 of the Evidence Act, seeking forensic examination of the thumb impressions on the documents dated 17.12.1973 to compare them with Sukh Devi's admitted thumb impressions on a sale deed dated 10.04.1972. The learned Trial Court dismissed the applications, ruling that the documents were over 30 years old and benefited from a presumption of authenticity under Section 90 of the Evidence Act.

7. The Plaintiffs thus claim the possession of the suit property and arrears of rent/damages, basing their case on certain documents including the GPA, ATS, and receipts - all dated 17.12.1973. The suit was filed in the month of October, 2018.

8. The petitioners/defendants during the course of recording of evidence filed an application in the month of July, 2022, pleading that the documents relied upon by the plaintiffs are forged and fabricated. It was claimed that *prima facie*



comparison of thumb impression of Smt. Sukh Devi on the sale deed pursuant to which she became the owner of the suit property and on the GPA, ATS and receipt executed in favour of the predecessor in interest of the plaintiff are different and not admissible.

9. Section 45 of the Evidence Act requires that when the Court has to form an opinion upon the identity of handwriting or finger impressions, an expert can be called.

10. The learned Trial Court noted that the documents relied upon by the plaintiffs are registered documents whose registration has already been proved as valid by examining PW-2, who was the Record Attendant in the Department of Delhi Archives. The learned Trial Court also perused the thumb impression of the executor and held that the thumb impression, upon *prima facie* examination, appeared consistent, and no substantive basis was provided to justify forensic scrutiny.

11. The learned Trial Court also took note of Section 90 of the Evidence Act which provides that when the documents are proven to be 30 years old and are produced from any custody, the Court may presume that the signature and every other part of the documents is in that person's handwriting and is duly attested and executed by the person by whom it purports to be executed and attested. The learned Trial Court thus, noted that the documents having been proved by examination of PW-2, Record Attendant in Department of Delhi Archives, get the benefit of Section 90 of the Evidence Act.

12. Having heard learned counsel for the petitioners, this Court finds no infirmity in the orders passed by the learned Trial Court.

13. The defendants have the right to present evidence, including expert opinions, to support their claim of forgery.



However, this does not mean they can demand that the documents be sent to a specific laboratory for examination. The application filed by the defendants appears to be aimed at delaying the trial rather than serving a substantive purpose.

14. In view of the above, the petitions are dismissed. Pending applications also stand disposed of.

15. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

JANUARY 27, 2025 / DU