

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

% *Date of Judgment:23.04.2012.*

+ CM(M) 470/2012 & CM Nos.7244-45/2012

SEEMA ANAND ..... Petitioner  
Through Mr.Anil Kathuria, Adv.

versus

PREM KUMAR ..... Respondent  
Through Nemo.

**CORAM:  
HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.** (Oral)

1 Four applications have been disposed of vide the impugned order dated 21.03.2012. Two applications have been filed by the plaintiff and two applications have been filed by the defendant. The two applications filed by the plaintiff were; the first application was under order 13 Rule 2 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking permission of the Court to place on record the original document i.e. agreement to sell by virtue of which he had claimed

ownership in the suit property; present suit is a suit for possession; the plaintiff had relied upon the agreement to sell dated 21.04.2008 claiming ownership in the suit premises; admittedly the photocopy of the aforementioned document had been filed but it could not be exhibited; in the course of testimony of PW-1 as the original document was not on record; it had only been marked; it was at that stage when the present application had been filed by the plaintiff under Order 13 Rule 2 of the Code seeking permission of the Court to place on record the original of the aforementioned document. Reply had been filed opposing the application primarily on the ground that the original document had not been filed in the time frame; it should have been filed along with the plaint and could not have been filed later on. The authenticity and validity of the aforementioned document has not been questioned. Record shows that along with the suit for possession photocopy of this document had been filed; in this application under scrutiny it had been averred that it was only when the testimony of PW-1 was in progress that the present application had been filed as the plaintiff realized that it was only a photocopy and not the original which had been filed; it was then marked and not exhibited. Validity of the document not being disputed and this

application having been filed at the stage when the evidence of the plaintiff was in progress, the impugned order allowing the prayer made by the applicant/plaintiff in no manner suffers from any infirmity.

2 The second application which had been allowed was the prayer of the plaintiff seeking permission of the Court to place on record the list of witnesses was taken on record. This was during the testimony of PW-1 which was in progress at that stage. The order on this application also suffers from no infirmity.

3 The defendant is also aggrieved by the finding returned on the two applications filed by him; first application is under Order 14 Rule 2 of the Code; the second application is under Sections 33/35 of the Indian Stamp Act; contention in the first application is that a preliminary issue should be framed which is to the effect that the suit is not maintainable in the present form; objection of non-joinder of parties had also been taken. The Court had correctly returned a finding that this application had been filed at the stage of the evidence of the defendant and as such no preliminary issue can be framed at that stage when the evidence has almost culminated and case is ripe for conclusion. The Court had also noted that on 18.04.2009, a preliminary issue had been framed which

was to the aforementioned effect:-

*“Whether the suit is not maintainable in view of the non-registration of the agreement to sell and other documents to which the property is transferred which are related to under stamped as per the later notification?”*

4 This issue was disposed of on 21.04.2009; while disposing of this preliminary issue as also the second preliminary issue which was on pecuniary jurisdiction, the Court had noted that the question whether the documents (agreement to sell) is under-stamped or not can be looked at only after the trial for which purpose evidence is required and cannot be disposed of at that stage. This finding in the order dated 21.04.2009 was up-held by the High Court in CM (M) No. 741/2010 on 28.05.2010.

5 By way of the aforementioned present two applications which the defendant has filed, he is seeking to raise the same issue which already stood decided by the trial Court on 21.04.2009 and stood endorsed by the High Court on 28.05.2010; these applications filed by the defendant are nothing but an abuse of the process of the Court and had been filed only with an intent to delay the progress of the case and this was noted in the correct perspective in the impugned order.

6 The present petition is an abuse of the process of the Court; it is filed malafide; it is nothing but one more last ditch effort to delay the

progress of the case; it is dismissed with costs of Rs.20,000/-.

**APRIL 23, 2012**  
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**INDERMEET KAUR, J**