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

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**C.M. (Main) No.1178 of 2008 & C.M. Appl. No.14752 of 2008**

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**12.01.2010**

VIJAY KUMAR

.....Petitioner

Through: Mr. I.S. Dahiya, Advocate.

Versus

MAN MOHAN & ORS.

.....Respondents

Through: Mr. Sunil Chauhan, Advocate for R-5.

Date of Reserve: 6<sup>th</sup> January, 2010

Date of Order: 12<sup>th</sup> January, 2010

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**J U D G M E N T**

**1.** By this petition under Article 227 of Constitution of India, the petitioner has assailed an order dated 7<sup>th</sup> May, 2008 whereby the application of the petitioner under Section 151 CPC was dismissed.

**2.** The grounds for assailing the order are that the trial court failed to appreciate that the petitioner and his family were illiterate and the petitioner himself was a man of unsound mind and his cases were being pursued by Smt. Bhagwani Devi (his mother), who died on 10<sup>th</sup> May, 1996 without informing about the pendency of the case. It is further submitted that the trial court failed to appreciate that the petitioner and Mr. Satish Kumar (another land holder), were minors in the year 1972 when Mr. Krishan Kumar was given General Power of Attorney to deal with the property and they were not capable of giving their consent. The trial court also failed to appreciate that file of the case was not

consigned to record room on 18<sup>th</sup> February, 1994 and the trial court itself had doubt about the genuineness of the application regarding withdrawal of the suit.

**3.** The above grounds along with other grounds are not germane to the order passed by the learned trial court. The facts reveal that suit No.2968 of 1988 was filed before this court and in the year 1993, this was transferred to the district court on raising jurisdiction of the district court. It was renumbered as suit No.508 of 1993. An application was moved by the legally appointed guardian of the petitioner, under Order 23 Rule 1 CPC and this application was supported by affidavit of Smt. Angoori Devi, Smt. Krishna Devi and Smt. Bhagwani Devi with the result that the trial court dismissed the suit as withdrawn vide order dated 18<sup>th</sup> February, 1994. After the suit was dismissed as withdrawn, an application under Section 151 CPC was filed for revival of the suit by Smt. Bhagwani Devi only. This application under Section 151 CPC was not pursued for about nine years. Though Smt. Bhagwani Devi died in the year 1996, her legal representatives and present petitioner was brought on record but this application was not prosecuted and ultimately this application was dismissed in default on 14<sup>th</sup> January, 2003.

**4.** Another application under Order IX Rule 9 CPC read with Section 151 CPC was filed by the present petitioner on 24<sup>th</sup> October, 2007 for revival of the application dismissed in default on 14<sup>th</sup> January, 2003. The trial court dismissed this application after giving the facts and reasons and noting that the earlier application was not pursued and no reasonable ground was given as to why the application under Order IX Rule 9 CPC read with Section 151 CPC was filed after about three years and nine months of dismissal of the application under Section 151 CPC. The trial court held that the application was barred by time and was not maintainable. The reasons for filing the application with such a delay was not cogent and dismissed the application vide impugned order.

5. It is settled law that under Article 227 of the Constitution, a court does not act as a court of appeal. Article 227 is to be invoked by the court only in exceptional cases where the court below had either exceeded jurisdiction or has acted without jurisdiction. The court cannot review the orders of the trial court on merits nor can act as a court of appeal under Article 227 nor the court can substitute its own discretion in place of the trial court. It was within jurisdiction of the trial court to consider whether the ground given for such delayed filing of application were reasonable or not and whether the application was maintainable or not.

6. I find no jurisdictional error in the order of the trial court and the petition is liable to be dismissed. Even otherwise also, I find it is not a case where grave injustice was going to be done to the petitioner rather the petitioner has been unnecessarily filing one after another proceedings. The factual position after dismissal of the suit on 18<sup>th</sup> February, 1994 has also changed. The property has been mutated in the revenue record in the name of the respondents vide order dated 22<sup>nd</sup> December, 2007. The cause of action for which the suit was made does not survive. Revival of the suit after about sixteen years of its dismissal would be unjust in the sense that the court cannot reverse the wheel of time and cannot order that all acts, which have taken place after the suit was dismissed in view of compromise, should be nullified and suit should be restored.

7. In view of the above discussion, this petition is hereby dismissed.

**SHIV NARAYAN DHINGRA J.**

**JANUARY 12, 2010**  
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