

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

% *Order delivered on: July 31, 2013*

+ **C.R.P. 137/2013**

SMT. PRAKASHI DEVI ..... Petitioner  
Through Mr.Hari Prakash, Adv.

versus

M/S MAHABIR STEEL ROLLING MILLS & ORS. .... Respondents  
Through None.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J. (Oral)**

**CM No.11665/2013**

Exemption allowed, subject to all just exceptions.

The application is disposed of.

**C.R.P. 137/2013, CM Nos.11666/2013 and 11667/2013**

1. The petitioner has filed the present revision petition under Section 115 of the CPC for setting aside the order dated 25<sup>th</sup> September, 2012 whereby the application of the petitioner under Order XLI Rule 27 CPC in RCA No.134/2009 was dismissed. The said appeal was filed against the judgment and decree dated 24<sup>th</sup> September, 2009 passed by the trial court.
2. The case of the petitioner is that in the said appeal the petitioner filed the said application stating that the petitioner was a 75 years old illiterate lady and she had taken the plea in the suit that the suit property was not part of Khasra No.566 measuring 2 bigha and 5 biswa situated in moja village

Sikdarpur, Illaqua Shadara, Delhi, and the respondents in connivance with the Naib Tehsildar/Patwari had shown the property, as bearing Khasra No.566 and she came to know in the month of July, 2011 that the suit property was part of Khasra No.414 situated in village Sikdarpur, which was under the Managing Officer (Survey), Jamnagar, New Delhi, and the said details had been received by the petitioner under the RTI Act. It was prayed by the petitioner that she be allowed to produce/lead evidence to examine the witness, as despite of due diligence such evidence was not within the knowledge of the appellant before passing of the impugned judgment and decree.

3. The court below gave its findings in para 18 of the impugned order which reads as under:

“18. Cumulative effect of the above discussion is that I am of the considered view that the appellant was having ample opportunities to lead the evidence that the suit property bears khasra no.414. But, she failed to lead any cogent evidence in the trial court and since from the testimonies of above said PWS and admission by the appellant that suit property bears municipal No.1/4121 and from the uncontroverted site plan Ex.P5. The suit property has been identified and from the demarcation report Ex.PW5/1, it is proved on record that the appellant was found in possession of property khasra no.566 bearing municipal No.1/4121, and from the reply dated 25.08.75 and the application dated 18.02.75, it is clear that appellant was corresponding with reference to khasra no.414 in the year 1975. But, she failed to lead any evidence. So, such statement of the appellant does not inspire any confidence that she was not aware of this fact. Even otherwise, from the documents placed on record of the trial court, being Ex.D1 & Ex.D2, it is clear that property bearing khasra no.414 is bearing municipal

number other than the municipal number of the suit property. At this stage, appellant cannot be allowed to lead any additional evidence to fill up the lacuna. In my considered opinion, the application is nothing but is another attempt to cause further delay. Accordingly, it is held that the application filed by the appellant u/o 41 rule 27 of CPC, is devoid of merit. So, the same is hereby dismissed. Matter stands adjourned for hearing arguments on appeal.”

4. Learned counsel for the petitioner has not denied the fact that the letters dated 18<sup>th</sup> February, 1975 and 25<sup>th</sup> February, 1975 were written by the petitioner wherein it is specifically mentioned that the House No.1413/161B (New H.No.1/4121, Ram Nagar Ext.) falls in Khasra No.414. Therefore, it is clear that the petitioner was corresponding with reference to Khasra No.414 in the year 1975. The site plan Ex.P5 was not controverted by the petitioner. From the demarcation report Ex.PW5/1, it was proved on record that the petitioner was found in possession of property khasra no.566 bearing municipal No.1/4121. But despite of availing opportunity to lead evidence between 28<sup>th</sup> November, 2005 to 1<sup>st</sup> October, 2008 she failed to lead any cogent evidence to prove that the suit property is bearing Khasra No.414. The statement that she was not aware about this fact prior to the passing of the judgment and decree passed by the trial court does not inspire any confidence. Thus, it appears to the Court that the present petition is totally false and frivolous.

5. The other aspect of the matter is that there is delay of 142 days in filing the present petition. No sufficient cause has been shown by the petitioner for such delay except it is merely stated that petitioner being old lady, thus, the delay be condoned. The said explanation cannot be accepted

unless some other material is available on record. The petition is rejected on this reason also.

6. The petition is accordingly dismissed.

**(MANMOHAN SINGH)**  
**JUDGE**

**JULY 31, 2013**