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

RSA No. 61 OF 2007

Date of Decision : 01-08-2008

SANT KIRPAL SINGH Appellant
Through Mr. J.K.Jain, Advocate

versus

SIR SOBHA SINGH & SONS P.LTD. Respondent
Through Mr. P.S.Bindra, Advocate

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

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

REKHA SHARMA, J. (ORAL)

The defendant herein – Sir Sobha Singh & Sons Pvt. Ltd. had filed a suit in the court of Civil Judge against the appellant Sant Kirpal Singh seeking relief of mandatory injunction directing the appellant to demolish one temporary kutcha room measuring approximately 8' x 8' on the roof of Gurdwara Singh Sabha, Sujan Park, New Delhi. The said suit was filed on July 24, 1990. After a full-fledged trial, a decree was passed in favour of the respondent on November 29, 2004. Consequently, the appellant was directed to demolish the temporary kutcha room as described above. Aggrieved by the said order, the appellant preferred an appeal in the court of Additional District Judge Shri M.C.Garg but did not succeed. Hence, the present appeal.

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It has been argued by learned counsel for the appellant that the suit as filed before the Civil Judge was barred by time inasmuch as the appellant was in possession of the roof in question with effect from November 20, 1974 while the suit was filed on July 24, 1990. According to the counsel, the limitation for filing a suit for mandatory injunction is three years and, therefore, the suit ought not to have been entertained by the Civil Judge.

Admittedly, the appellant did not raise the question of limitation before the Civil Judge. Therefore, rightly no issue with regard to the limitation was framed. In any case, learned counsel for the appellant has not been able to show which Article of the Limitation Act is attracted which made the suit of the respondent barred by limitation. The case of the respondent before the Civil Judge as well as before the Additional District Judge and also before this Court is that the appellant is in unauthorized occupation of the suit property and the construction raised thereon is also unauthorized.

The appellant in order to succeed in appeal is required to prove that he was in lawful occupation of the suit property and the construction raised was not unauthorized.

On the question that he is in lawful occupation of the suit property, it is submitted by learned counsel for the appellant that a Will was executed in his favour by late Sir Sobha Singh and thereby he came into possession of the suit property. Both the trial court and the first appellate court have held that the appellant led no evidence to prove the Will on the basis of which he staked his claim to the suit property. This being so, he has failed to establish that he is in lawful occupation of the suit property. The respondents, on the other hand,

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have contended that the suit property has been unauthorisedly built by the appellant, and the respondents can at any point of time seek mandatory injunction for demolition of the suit property.

I find no infirmity either in the order of the trial court or the first appellate court. No question of law has been raised by the appellant much less substantial question of law.

The appeal is dismissed.

AUGUST 01, 2008
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REKHA SHARMA, J.