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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Pronouncement: 14.08. 2015

+ CM(M) 115/2014

RAJINDER KUMAR GARG & ORS

..... Petitioners

Through

Mr. Sanjeev Sindhwani, Sr.
Advocate with Mr. Sanjay Dua and
Manish Aggarwal, Advocates

versus

HARBHAJAN SINGH & ANR

..... Respondents

Through

Mr. Virender Singh and Mr. D.S.
Popli, Advocates for Darshan
Singh Popli/the applicant
Mr. R.V. Sinha and Mr. A.S.
Singh, Advocates for R2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present petition is filed seeking to impugn the order dated 19.10.2013 passed by the learned ADJ.
2. The brief facts which led to the filing of the present petition are that respondent No.1-Sh.Harbhajan Singh, since deceased filed a suit seeking a decree of possession in respect of the property bearing No. 102, Rectangle No.13, Kila No.26/3 situated in village Khuraji Khas, Abadi Jagatpuri, New Delhi. It was the contention of respondent No.1 that he is the owner of the suit property having purchased the same from the erstwhile owner on the basis of agreement to sell dated 22.10.1993,

registered GPA, Will, affidavit, etc. The suit was filed in December 2004.

3. The petitioners who are the defendants contested the suit claiming title to the suit property.

4. On 18.10.2011, respondent No.1 Sh.Harbhajan Singh passed away. After his death within the period of 90 days, applicant Sh.Darshan Singh Popli filed an application under Order 22 Rules 3 and 10 CPC seeking permission to prosecute the present suit. It was averred in the application that the deceased Harbhajan Singh had executed a Special Power of Attorney for prosecution of the present suit in favour of the said applicant. It is also averred that the said Harbhajan Singh had executed a Special Power of Attorney, GPA and Will dated 20.12.2003 which are also registered documents along with the agreement to sell etc. for a consideration of Rs.5 lacs in favour of applicant. Based on this application it was pleaded that in view of the death of Sh.Harbhajan Singh, the applicant be permitted to prosecute the suit.

5. The trial court vide its order dated 07.12.2012 noted that the Will dated 20.12.2003 executed by the deceased respondent No. 1 in favour of the applicant came into force only on the death of the deceased Sh. Harbhajan Singh on 18.10.2011. Hence, the court held that though some of the documents executed in favour of the applicant dated 20.12.2003 might have been executed prior to the institution of the suit, however, in terms of Order 22 Rule 3 CPC, the said right to sue survives in favour of the applicant. The trial court also noted that the application has been moved by the applicant within 90 days from the death of Sh. Harbhajan Singh (plaintiff). It was noted that the son of Sh.Harbhajan Singh, Sh. Gurjeet Singh has also filed an affidavit before the court stating that the

Will dated 20.12.2003 was executed by his father in favour of the applicant. The court concluded that the Will dated 20.12.2003 gives right to the applicant to prosecute the suit and allowed the application granting rights to the applicant to prosecute the suit.

6. In the appeal filed by the petitioners, the learned ADJ vide impugned order dated 19.10.2013 dismissed the appeal upholding the order of the trial court.

7. I have heard learned counsel for the parties and perused the record. Learned counsel appearing for the petitioner strenuously urged that the impugned order is entirely erroneous and misplaced. It is submitted that as per the documents placed on record, the applicant claims to have become the owner of the suit property on 20.12.2003 i.e. prior to the date of the filing of the suit. The suit was filed in December 2004. Hence, it is urged that the provisions of Order 22 Rule 10 CPC would have no force. It is secondly urged that even otherwise, the present application is filed based on the documents of 2003 in the year 2012. Hence, the present application filed by the applicant was barred by limitation. Reliance is placed on the judgments in the case of *State of Kerala vs. Sridevi & Ors. (2000) 9 SCC 168* and *Lal Chand Public Charitable Trust v. Delhi Wakf Board & Ors., 2012 (189) DLT 397* to contend that in a case where Order 1 Rule 10 CPC has to be invoked, in terms of Article 137 of the Limitation Act, the limitation of three years would apply. It is lastly submitted that the applicant is only playing tricks with the court. He had appeared as a witness in the suit while respondent No.1-Harbhajan Singh was alive. There he had not mentioned about his own title. He cannot now, hence, come forward and claim any right to prosecute the suit.

8. Learned counsel for the applicant has relied upon the Will to contend that the cause of action arose only on the death of Sh.Harbhajan Singh in the year 2011. Hence, the application has been filed within the period of limitation when the interest has been transferred to the applicant.

9. It is no doubt true that Order 22 Rule 10(1) CPC states that in a case of an assignment, creation or devolution of any interest during pendency of the suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. In the present case the question is when did interest devolve upon the applicant. In the application filed by the applicant, reliance is made on the documents executed by late Sh.Harbhajan Singh on 20.12.2003 to claim assignment of interest in his favour.

10. The reply, filed by the petitioner to this application is important. The petitioners claim in the reply that on 20.12.2003 late Sh.Harbhajan Singh had neither acquired any title nor was in possession of the suit property. Hence, it is urged that he had no right or authority to execute the Will in respect of the suit property in favour of applicant. Reliance is placed on Section 54 of the Transfer of Property Act read with the Registration Act to contend that the documents relied upon by the applicant do not create or confer any right or interest in the immovable property. Hence, the stand of the petitioners is that late Sh.Harbhajan Singh did not have a title in 2003 and could not transfer any title to the applicant. The petitioner hence now cannot plead contrary to his pleadings.

11. The admitted fact is that the documents relied upon by the

applicant did not in view of Section 54 of the Transfer of Property Act confer legal title on the applicant in 2003. These documents i.e. GPA, Agreement to Sell, etc. are not as per the requirement of section 54, Transfer of Property Act. It follows that on the death of Sh.Harbhajan Singh in view of the Will executed by him dated 20.12.2003 which is a registered document, title will flow to the applicant. In my opinion, the impugned order has rightly relied upon the said Will to hold that the right of the applicant devolved upon him based on this document and the application, by the applicant Sh.Darshan Singh Popli is filed within the limitation period.

12. It may also be noted that the petitioners have failed to spell out as to who according to them would be the rightful legal heir to prosecute the suit after the death of the original plaintiff-Sh.Harbhajan Singh. The only other person who possibly can step in as a legal representative is the son of late Sh.Harbhajan Singh. The son has already filed an affidavit in court on 19.05.2012 stating that the Will dated 20.12.2003 was executed by his father in favour of the applicant.

13. In the light of the above facts, the applicant is the appropriate person to prosecute the suit. I see no reason to interfere in the impugned order.

14. There is no merit in the present petition and the same is dismissed.

(JAYANT NATH)
JUDGE

AUGUST 14, 2015
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