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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 78/2014

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Decided on: 14th January, 2015

SANTOSH DEVI

..... Petitioner

Through: Mr. Ankit, Advocate.

versus

OMBIR SINGH & ANR

..... Respondents

Through: Mr. Prem Chand Ganganiya,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No.9777/2014 (Delay in filing)

For the reasons stated in the application the delay of 89 days in filing the petition is condoned.

Application is disposed of.

C.R.P. 78/2014 and CM Nos. 9776/2014 (Stay)

1. The Petitioner impugns the order dated 29th November, 2013 whereby the suit filed by her under Section 6 of the Specific Relief Act, 1963 (in short 'the SP Act') has been dismissed.
2. The Petitioner/Plaintiff filed a suit claiming that she was the landlady of House No. 326-B, Village Karkardooma, Shahdara, Delhi-92 and residing in the said premises along with her family for the last 30 years. It is stated that the Defendants/Respondents herein who are the husband and wife forcibly and illegally occupied one room under the tenancy of Shri Sarwan in the above said property who vacated the said premises pursuant to an

execution of decree dated 31st March, 2005 passed by the learned Civil Judge, Delhi. However, after removal of the household goods from the said room by the concerned Bailiff, the Defendants did not go away but placed their goods in the middle of the courtyard and later on erected a temporary wooden hut/Jhuggi. Subsequently, the Defendant No.2/Respondent No.2 transferred her share and went to the village with all domestic articles on 19th September, 2009 and started living there. Thus the Plaintiff got possession of the entire property along with the courtyard. The Defendant No.2 at the instance of Defendant No.1 thereafter filed a suit and an application for reviewing the judgment and decree dated 17th January, 2007 which was dismissed vide order dated 30th January, 2009. The Defendants thereafter forcibly and illegally entered the house of the Plaintiff and trespassed into the portion admeasuring about 10 ft. x 10 ft. of the courtyard and erected a temporary wooden hut/Jhuggi by demolishing the bathroom of the Plaintiff and also converted it into a Pakka one without the consent of the Plaintiff. Thus the Defendants were unauthorized occupants and have no legal right to use the portion of the courtyard. Plaintiff also stated that the Defendants are trying to sublet, assign or part with the possession of the premises and create third party interest and thus a decree of possession of the demised premises/portion of the courtyard as per the site plan and permanent injunction from letting, assigning any part in possession or creating any third party interest is sought along with the mesne profits pendente-lite and future with interest thereon.

3. On the Defendants entering appearance they pleaded that there was no cause of action to file the suit and that the Plaintiff and Defendant Nos.2 were real sisters. Defendant No.2 was the owner of the property in question

and the Plaintiff had no locus-standi to file the suit. The Defendants further denied having entered into the disputed property forcibly or illegally or trespassing into the portion/space admeasuring approximately 10ft x 10ft by dispossessing the Plaintiff. It was also denied that the Defendants erected temporary wooden hut/jhuggi without the consent of the Plaintiff or that they extended threats to the Plaintiff. It is stated that no incident took place on 4th August, 2010 and the suit be dismissed.

4. On completion of pleadings the following issues were settled:

- “1. Whether the plaintiff is entitled for possession of the portion as shown in red colour forming part of house no. 326-B, Village Karkardooma, Shahdara, Delhi-92? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as claimed for? OPP*
- 3. Whether the plaintiff is entitled to mesne profit @ Rs.2,000/- per month along with 18% per annum interest? OPP*
- 4. Whether the plaintiff has locus standi to file the present suit?*
- 5. Relief.”*

5. Dealing with the Issue Nos. 1 and 3 regarding entitlement of the Plaintiff to the possession and mesne profit, the learned Trial Court noted that the Plaintiff was required to prove that she was dispossessed by the Defendants without following due process of law. The Plaintiff did not examine herself as witness but examined her husband as the only witness. Two set of facts were pleaded, one that on 19th September, 2009 the

Defendants vacated the suit premises and left for their village along with the household articles and that on 4th August, 2010 the Defendants again came back to Delhi and forcibly and illegally dispossessed the Plaintiff. Suggestion was given to PW-1 that the Defendants had not gone to the village after selling the property bearing 326-B, Village Karkardooma, Shahdara, that is, the suit premises. In cross-examination PW-1 admitted that the Defendant No.2 had not given the possession of the suit property to Amrik Singh to whom she had sold the said property and a copy of the Sale Deed was placed on record as Ex. PW-I/II. PW-1 further admitted that Smt.Kamlesh, that is, the Defendant No.2/Respondent No.2 had filed a suit for partition and permanent injunction before the learned ADJ being Suit No.85/2005 wherein stay was granted in favour of Smt. Kamlesh on 17th January, 2007. It is thus clear that the vacant possession of the premises was never handed over to the Plaintiff.

6. DW-1 in his cross-examination deposed that he had been residing in the property No.326-B, Village Karkardooma, Delhi since the year 1988 along with his wife and children. At that time they were in possession of one room and one shop. The said one room was now in possession of one Shrawan son of Gyan Singh. A suit for eviction was filed by Shrawan against him and his wife which was decreed by the learned Civil Judge and the premises was got vacated by the Court Bailiff in execution of the decree passed by the Court in the year 2007. He denied that he handed over the vacant possession of the Jhuggi in the property No.326-B, Karkardooma on 19th September, 2009 to Smt. Santosh Devi or that they went to their village and started living there.

7. On the basis of the depositions and the documents placed the learned Civil Judge held that the Petitioner/Plaintiff has not been able to prove that she was dispossessed from the premises and thus Issues No.1 and 3 were decided against the Petitioner.

8. As regard the second issue of permanent injunction the learned Civil Judge noted that in the previous suit being Suit No.39/2008 titled as ‘Kamlesh and others vs. Santosh Devi’, that is, between the same parties, it was admitted that the suit property was acquired land vide award No.3469-70 and mutated in the name of the Government in the Revenue record. It was thus held that neither the Plaintiff nor the Defendants have any legal right to transfer the suit property.

9. Considering the depositions of the witnesses and the evidence on record as noted above, it is clear that as regards title, neither the Plaintiff nor the Defendants have title in the property and hence no injunction could be granted. As regards the possession the onus was on the Plaintiff to prove that she was illegally dispossessed which onus has not been discharged by the Plaintiff and hence there is no infirmity in the impugned judgment dismissing the suit.

10. Petition and application are dismissed.

11. No order as to cost.

(MUKTA GUPTA)
JUDGE

JANUARY 14, 2015
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