

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. No.131/2008 & C.M. No.15757/2012**

Decided on : 8th December, 2015

LAXMAN PRASAD GUPTA & ANR. Petitioner
Through: Mr. Rahul Srivastava, Mr. Manu Dev
Sharma & Ms. Anushka Arora,
Advocates.

Versus

JASPAL SINGH Respondent
Through: Mr. Mukesh Kumar Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioners against the order dated 8.7.2008 by virtue of which the learned Additional District Judge, Delhi has dismissed the application of the petitioner under Order VII Rule 11 CPC in Suit No.200/06 titled *Jaspal Singh vs. Laxman Prashad Gupta & Another* holding that the issue of limitation is a mixed question of fact and law and therefore, has to be decided after the parties are permitted to adduce evidence. So far as issue No.4 which was framed with regard to the suit not being properly valued for the purpose of court

fees and jurisdiction is concerned, the same was also directed to be substantiated by the applicant/defendant and could be decided after the parties have adduced their evidence.

2. I have heard the learned counsel for the petitioners as well as the learned counsel for the respondent. The main contention of the learned counsel for the petitioners is that the suit as framed without reference to the defence of the applicant/defendant is barred by limitation as the same is filed for recovery of possession and the suit for recovery of possession is to be filed within 12 years from the date of accrual of cause of action whereas it has been filed after expiry of 12 years.

3. Before dealing with this point, it may be pertinent here to give the facts of the case. The respondent/plaintiff filed a suit for possession of premises bearing Flat No.1 & 2, Mezzanine Floor, 14, School Lane, Bengali Market, New Delhi alleging that his father Raghubir Singh Wadhera, who died on 30.11.1992, had purchased the suit property from M/s. Lion Builders Pvt. Ltd. for a consideration of Rs.1.5 lacs against receipt-cum-possession letter dated 2.6.1989 and actual possession was handed over to him. The seller also issued a duly sworn and attested affidavit dated 1.10.1990 and letter of allotment dated 29.5.1989 to father

of the respondent/plaintiff on the basis of which the respondent/plaintiff is claiming ownership rights of the suit property. It is alleged that the petitioners/defendants took forcible possession of the suit property by breaking open the locks on 26.3.1991 and a criminal complaint was also lodged in this regard. As a counter-blast, the petitioners/defendants filed a suit for permanent injunction against Raghubir Singh Wadhera on fictitious grounds, which was dismissed by the learned Civil Judge on 22.10.2005. During the pendency of the said suit, the respondent maintained that their father is the owner of the suit property and through him, they are the legal owners. The respondent/plaintiff also instituted another civil suit for permanent injunction against petitioners/defendants along with contempt petition bearing No.35/99 before the learned Civil Judge. The petitioners/defendants are in illegal possession of the suit property since 1991.

4. The essential aspect to be considered is that this is a suit for possession filed by the petitioner and the petitioner himself in paragraph 5 of the plaint has averred as under :-

“That the defendants as named in the title, forcibly and by illegal means by breaking open the locks on or around 26.03.1991 and removing the office furniture i.e. tables and

chairs of the plaintiff's father, entered into and took possession of the suit property. This was done by the defendants Shri Laxman Parshad Gupta and his wife Smt. Rita Gupta."

5. In paragraph 13 of the plaint, it has been averred as under :-

"That the cause of action arose at Delhi first on when the suit property was purchased by the father of the plaintiffs on 02.06.1989, then when the defendants illegally occupied the suit premises by forcibly breaking the locks on 26.03.1991 and the cause of action still continues."

6. A perusal of the aforesaid two paragraphs of the plaint would clearly show that the respondent/plaintiff is not in possession as he was dispossessed on 26.3.1991 according to his own saying. This is not in dispute that according Article 64 of the Limitation Act, a suit for possession is to be filed within a period of 12 years from the date of accrual of cause of action. Since possession is sought to be retrieved by filing the aforesaid suit for possession obviously, the cause of action had accrued to the plaintiff/respondent on 26.3.1991 and the period of limitation will start ticking from 27.3.1991. If the period of 12 years is reckoned from 27.3.1991, the same would end on 26.3.2003. If we go by the averment made in the cause of action clause, the position becomes much worse because the respondent/plaintiff is stating that the cause of

action accrued to him to file a suit for possession on 2.6.1989 then the period of limitation will have to be reckoned from 3.6.1989 and it will come to an end two years earlier than the aforesaid period, that is to say, it will come to an end on 1.6.2001. There is no dispute about the fact that the suit has been filed on 29.8.2006. Thus, from the aforesaid dates, which are admittedly the plaintiff/respondent's case himself in the plaint, *ex facie* the suit becomes barred by limitation.

7. I am unable to understand as to how the learned ADJ has taken into consideration the various other factors including filing of a suit by the tenant himself against the plaintiff/respondent as enlarging the period of limitation of 12 years so as to make the suit within limitation *prima facie* and holding that this becomes a mixed question of law and fact. No doubt in a given case, the question of limitation may not be clear and it may be a mixed question of law and fact but certainly in the instant case, from the averments themselves it is very crystal clear that the suit of the plaintiff/respondent is barred by limitation. I, therefore, feel that the order dated 8.7.2008 passed by the learned ADJ is perverse on the question of limitation as being a mixed question of law and fact which can be decided only after the parties are permitted to adduce evidence. I,

therefore, set aside that order and hold that on the basis of the averments, the suit itself is barred by limitation and therefore, the application filed by the petitioner/defendant under Order VII Rule 11 clause (d) of the CPC *ex facie* was barred by limitation and therefore, liable to be rejected.

8. I, therefore, allow the revision petition and hold that the suit of the respondent/plaintiff was barred by limitation and is liable to be rejected. Ordered accordingly.

9. A copy of this order be sent to the learned ADJ for information and compliance.

V.K. SHALI, J.

DECEMBER 08, 2015
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