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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.178/2015

Decided on : 3rd July, 2015

MAHINDER SINGH

..... Appellant

Through: Mr. Himanshu Upadhyay, Advocate.

Versus

MURTI DEVI & ORS.

..... Respondents

Through: Mr. R.C. Sharma, Adv. for LR's for R-2.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

Caveat No.462/2015

Since the learned counsel has put in appearance on behalf of the caveator, the caveat stands discharged.

C.M. No.8516/2015 (for exemption)

Allowed, subject to the deficiency being rectified.

The application stands disposed of.

R.S.A. No.178/2015 & C.M. No.8515/2015 (for stay)

1. This is a regular second appeal filed by the appellant against the judgment dated 6.2.2015 passed by the learned Additional District Judge in R.C.A. No.36/12.

2. I have heard the learned counsel for the appellant and have gone through the record. The appellant has not been able to show that any substantial question of law is arising from the appeal which may warrant entertaining of the present second appeal. However, before dismissing the same, it may be pertinent here to mention that the appellant filed a suit for mandatory and permanent injunction claiming himself to be the owner of the land in question which is bearing No.B-45, Golden Enclave, Nangli Dairy, New Delhi measuring 167 square yards falling in part of Khasra No.34/15.

3. It is further alleged by him that two rooms were built on the said parcel of land. The case which was setup by the appellant in the plaint was that the aforesaid land belonged to one Prem Singh, who had sold it to Attar Singh and Attar Singh is the person who had sold the said land to the appellant. It has been stated that Attar Singh had filed a suit for permanent injunction against Shish Ram and others bearing suit No.622/93. In the said suit, injunction was granted in favour of Attar Singh; however, the said suit was later on dismissed by the learned Civil Judge on 8.2.2005. The suit was dismissed on account of the fact that Attar Singh who had filed the said suit had died and the legal heirs of the

deceased Attar Singh were sought to be impleaded as party but they could not produce any document of the property in question during the pendency of the suit to prove the case.

4. The present appellant, Mahinder Singh, is claiming to have purchased the suit property from Attar Singh sometime in the year 1994 and this suit which was filed by Attar Singh is stated to have been dismissed in 2005 while Attar Singh had died in 2002. In the cause of action clause of the suit, the appellant/plaintiff herein has averred as under:-

“19. That the cause of action arose in favour of the plaintiff and against the defendants on 18.1.1994 when late Sh. Attar Singh executed the necessary documents in favour of the plaintiff, the cause of action again arose on 8.2.2005 when Hon’ble Court of Sh. Rakesh Pandit, Civil Judge, Delhi dismissed the suit No.622/93 filed by late Sh. Attar Singh and Sh. Prem Singh. The cause of action further arose on various times when the plaintiff requested to the defendants to hand over the physical vacant possession of the premises. The cause of action further arose on 15.12.2006 when the legal heirs of Sh. Attar Singh, i.e., defendants started to extend the threatening to the plaintiff to dispose off the plot in question to someone else by manipulating or fabricating the documents of the property in question. The cause of action further arose on 20.12.2006 when the plaintiff approached to the defendants at the plot in question and stated the defendants not to take the law in their own hands and not to dispose off the property in question by fabricating documents but the threatening of the defendants and the legal heirs of

late Attar Singh to dispose off the property in question illegally and forcibly and the cause of action still continued till the relief prayed is granted.”

5. The learned trial court dismissed the suit both on the ground of limitation as well as *res judicata*. On appeal being taken out by the appellant, the first appellate court also upheld the order passed by the trial court holding that the suit for injunction would not lie when the cause of action is stated to have accrued to him in 1994. The relevant paragraph reads as under :-

“13. Moreover, Sh. Attar Singh from whom the appellant/plaintiff claimed to have purchased the suit property in the year 1994, was expired before 2002. However, the appellant/plaintiff failed to explain satisfactorily as to why Sh. Attar Singh was pursuing the case in respect of the suit property till his death, if the suit property was sold by said Attar Singh to the appellant/plaintiff in the year 1994. There is also no cogent explanation on behalf of the appellant/plaintiff as to why he did not join the proceedings in the matters, i.e., previous suit filed by Sh. Prem Singh and Sh. Attar Singh against the Shish Ram and other defendant in the said suit, in respect of the suit property, even after alleged purchasing of the suit property by appellant/plaintiff from Sh. Attar Singh. Otherwise also, in the statement dated 1.12.1999 given by the appellant/plaintiff in the contempt petition it was nowhere stated that he had purchased the suit property from Sh. Attar Singh or he was also the lawful owner of the suit property. On this aspect also, there is no explanation on behalf of the appellant/plaintiff. The appellant/plaintiff also filed a suit in respect of the suit property in the year 2009, i.e., after 15

years from the alleged purchase of suit property from Attar Singh and the said suit was also withdrawn by the appellant/plaintiff on 5.6.2011 stating that the suit is barred by the limitation and in this respect the statement of appellant/plaintiff was also recorded on 16.5.2011.

It is pertinent to mention here that as per Article 65 of the Limitation Act, 1963, the period of limitation for recovery of possession of immovable property based on title is 12 years. Appellant/plaintiff claimed to have purchased the suit property on 18.1.1994 and for the first time appellant/plaintiff filed the suit in the year 2009, i.e., after 15 years from the date of alleged purchase of suit property, despite of the facts that respondents/defendants were also claiming ownership over the suit property. Hence, it is amply clear that the suit of the appellant/plaintiff is time barred. Moreover, in view of the aforesaid facts and circumstances as discussed above, the suit filed by the appellant/plaintiff is also barred under Section 11 & 12 CPC.”

6. The contention of the learned counsel for the appellant before this court is that the trial court while deciding the application under Order 39 Rule 1 & 2 CPC has dismissed the suit without giving an opportunity to the appellant to produce evidence with regard to the proof of his title. I do not find any merit in the submission because the second appeal is permissible only in the event of any substantial question of law arising. The suit *ex facie* is not maintainable both on the ground of limitation as well as on account of the fact that in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*; [2009] 7 SCC 363, the court has

categorically laid down that in a case where the person is claiming title on the basis of general power of attorney, receipt, agreement to sell, etc., the only remedy available to him is to perfect his title by filing a suit for specific performance against the vendor. In the instant case, the appellant herein is claiming to be the owner of the suit property on the basis of the aforesaid like documents, that is, agreement to sell, general power of attorney, receipt and Will, etc., therefore, he ought to have filed a suit for specific performance against Attar Singh or his legal heirs while as he has chosen to file only a suit for permanent/mandatory injunction. This cannot be permitted to be done. The suit has been rightly dismissed on the ground of limitation keeping in view the averments made by him in the cause of action clause as well as on account of the fact that there is already an adjudication of the suit filed by his predecessor-in-interest.

7. In view of the aforesaid facts as the appeal does not involve any substantial question of law, therefore, the present regular second appeal is dismissed.

V.K. SHALI, J.

JULY 03, 2015
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