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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 84/2015

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Decided on: 25th May, 2015

KULWANT SINGH

..... Petitioner

Through: Ms. Anusuya Salwan and Ms. Renuka
Arora, Advocates.

versus

MANOJ WADHWA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No.9938/2015 (Exemption)

Allowed, subject to all just exceptions.

C.R.P. 84/2015 and CM No. 9936/2015 (Stay) and 9937/2015 (Exemption from filing TCR)

1. Aggrieved by the judgment dated 26th March, 2015, dismissing the suit of the Petitioner under Section 6 of the Specific Relief Act, 1963 (in short 'the Act'), the Petitioner Kulwant Singh prefers the present petition.
2. Learned counsel for the Petitioner contends that in a suit under Section 6 of the Act, the Plaintiff is only required to show that he was in possession of the premises and has been dispossessed without due process of law. The Plaintiff is not required to establish its claim of possession through the title. In the present case the Petitioner placed on record documents to show his possession including the admission of the Respondent however, discarding

the evidence on record the learned Trial Court dismissed the suit filed by the Petitioner.

3. In the plaint filed by Kulwant Singh against O.P. Wadhwa and others seeking recovery of possession under Section 6 of the Act and injunction under Sections 38, 39 and 40 of the Act, the Petitioner stated that the property No. 4A/61, Old Rajinder Nagar, Shankar Road, New Delhi was owned by Notan Das Wadhwa on lease hold basis. After his death the same devolved on to his two sons Nath Prakash Wadhwa and O.P. Wadhwa. Kulwant Singh was a tenant in a portion falling under the share of Nath Prakash Wadhwa and also in occupation of some other portion of the suit property. It is also claimed that the Petitioner continues to be in possession of substantial portion of the suit property and he continues to be in occupation and possession of the substantial portion of the suit property with a change in his status with regard to half of the suit property. Nath Prakash Wadhwa initiated eviction proceedings against Kulwant Singh which were dismissed by the learned ARC and also dismissed the appeal. Thereafter settlement was arrived at between Kulwant Singh and Nath Prakash Wadhwa as a result of which Nath Prakash Wadhwa sold his half share in the suit property to the wife of Kulwant Singh on 1st September, 1989 and received the entire consideration. Wife of Kulwant Singh further transferred half portion of the said property to Kulwant Singh on 7th May, 1990 by executing documents such as Agreement to Sell, Power of Attorney, Receipts, Will etc. However, Kulwant Singh continued to be in physical occupation of the entire property except a shop on the front side of the suit property which was let out by O.P. Wadhwa to one Gulshan Kumar who continued to remain in occupation and possession of the same till 18th October, 2003 when he was

dispossessed in respect of the portion shown red in the site plan by Defendant No.1 without due process of law. Kulwant Singh had been running the business of digital photography in the portion shown in green in the site plan and the portion shown in the red colour was being used as store where water meter was installed and from which portion of sewer line in the property was passing. The air conditioner being used by Kulwant Singh for running the business of Digital Photography was also fixed at the common wall of the two portions and both these portions were in use and physical possession of Kulwant Singh.

4. Thus the claim of Kulwant Singh in the plaint is that he was a tenant in respect of suit property falling in the share of Nath Prakash Wadhwa and in respect of the share of O.P. Wadhwa which is a covered veranda shown in green colour in the site plan however, the portion he claims to be dispossessed from, marked as courtyard in the site plan and that the sewer line passes through it and the air conditioner is fixed on the common wall.

5. In the written statement O.P. Wadhwa inter alia took number of pleas including that the suit under Section 6 of the Act was not maintainable and Kulwant Singh was trying to take possession of the portion of the property which was never in his possession nor he had any right, title or interest therein. O.P. Wadhwa claimed that the suit for partition was instituted in the year 1989 wherein Kulwant Singh and his wife were also parties to the suit and they had filed the written statement before the Court. The said suit was dismissed on 17th April, 2003 and appeal against the said judgment and decree is pending consideration before this Court in RFA No.443/2003. Kulwant Singh has claimed that he came in possession of some portion of

the property as tenant and later acquired the same from his brother however, rest of the contents of the plaint were denied. Kulwant Singh after the purchase of the property during the pendency of the partition suit constructed a small room which is now alleged to be a photography room, that too without the consent of O.P.Wadhwa without any right, title or interest therein. When the suit for partition was pending there was a stay operating however, despite the stay the brother of O.P.Wadhwa transferred half of his share in the suit property. The property in L& DO record still stands in the name of O.P. Wadhwa and Nath Prakash Wadhwa and Kulwant Singh has not been dispossessed from any property. After the pleadings were complete the Court framed the following issues:

- “1. Whether the plaintiff is entitled to decree of possession, as prayed for? OPP.*
- 2. Whether the plaintiff is entitled to decree of perpetual injunction, as prayed for? OPP.*
- 3. Whether the plaintiff is entitled to decree of damages, as prayed for? OPP.*
- 4. Whether the suit of the plaintiff is not maintainable U/S 6 of Specific Relief Act? OPD.1*
- 5. Whether the suit of the plaintiff has not been properly valued for the purpose of court fee & jurisdiction? OPD.1*
- 6. Whether the suit of the plaintiff is barred U/s 138 and 140 of Delhi Police Act? OPD.2, 3 & 4.*
- 7. Whether the suit of the plaintiff is bad for non-joinder of necessary parties i.e. Union of India and Delhi Government? OPD.2, 3 & 4.*

8. *Relief.*”

6. The onus to prove the possession was on Kulwant Singh and the only document he produced was a photocopy of the document marked ‘F’ which was an application moved under Order I Rule 10 CPC read with Section 151 CPC in the other Civil Suit No.2374/1981 wherein Kulwant Singh claimed that O.P. Wadhwa had admitted the possession of Kulwant Singh regarding the other portion of the property. No certified copy of the document marked ‘F’, that is, the application was filed. Thus the same was not proved. Moreover, this document cannot be treated as an admission as the same is a self serving claim of Kulwant Singh himself. Indubitably, Kulwant Singh was not required to prove the title however, he was definitely required to prove the possession which he miserably failed to do. Even before this Court, the Petitioner bases his claim on the application which was marked as ‘F’ before the learned Trial Court which has not been proved in accordance with law and thus cannot be taken into consideration.

7. Consequently, I find no error in the impugned judgment. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 25, 2015/‘vn’