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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 59/2016

PREMLATA

..... Petitioner

Through: Mr. K.N. Rai & Mr. S.N. Rai, Advocate.

versus

SITA RAM

..... Respondent

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

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23.08.2016

C.M. No.15356/2016 (for exemption)

Allowed, subject to all just exceptions.

C.R.P. No.59/2016

1. By the present petition, the petitioner has impugned the order dated 16.2.2016 by virtue of which the application of the petitioner under Order VII Rule 11 CPC was dismissed. The plaintiff/respondent had filed a suit for recovery of Rs.19,60,000/-.

2. The petitioner filed the application under Order VII Rule 11 CPC contending that the court in question which is hearing the matter does not have the territorial jurisdiction to try the suit as no part of cause of action arose within the jurisdiction of the said court. It is also averred that the suit is filed without any cause of action.

3. The trial court noted that though in the plaint filed by the respondent, there is no reference to the area where the deed was executed but it was not in dispute that the agreement to sell dated

31.12.2007 bears the address of the property dealer in Shahdara which falls within the jurisdiction of the district of Shahdara. The trial court held that whether the deed was executed at the office of Vikas Properties or at the residence of the petitioner will have to be decided on evidence and dismissed the application under Order VII Rule 11 CPC.

4. The learned counsel appearing for the petitioner has vehemently argued that the trial court was bound to hold that the court does not have the territorial jurisdiction. He relies upon the judgments of the Supreme Court in *Saleem Bhai & Ors. vs. State of Maharashtra & Ors.*; JT 2002 (10) SC 558 and *R.K. Roja vs. U.S. Rayudu & Anr.*; JT 2016 (6) SC 440 to contend that the trial court was obliged to first decide the application filed by the petitioner under Order VII Rule 11 CPC and decide the same.

5. A perusal of the plaint filed by the respondent shows that as per the plaint the petitioner and the respondent, through one property dealer Vikas Properties, entered into an agreement to sell/*bayana* dated 31.12.2007. The respondent made a payment of Rs.1 lac towards part consideration. It was agreed that the remaining consideration of Rs.9,50,000/- will be payable at the time of execution of the deed and finalization of the sale process between 15.4.2008 to 30.4.2008. It was further claimed that the respondent has made payment of Rs.9,80,000/- out of the total sale consideration of Rs.10,50,000/-. As there is alleged default by the petitioner, the

present suit is filed. Based on a stipulation in the agreement to sell, the respondent claims the said amount of Rs.19,60,000/-.

6. No doubt, the plaint does not specifically state that the agreement between the parties was executed within the territorial jurisdiction of the trial court; however, as noted by the trial court, the agreement to sell itself shows that it was executed in Shahdara area. The said document is filed by the plaintiff and could be looked into.

7. As far as the contention of the petitioner that no cause of action has arisen is concerned, the averments in the plaint clearly show that a cause of action is spelt out.

8. As far as the reliance of the petitioner on the judgments of the Supreme Court in *Saleem Bhai* and *R.K. Roja (supra)* is concerned, the Supreme Court in these judgments has held that if an application under Order VII Rule 11 CPC is filed, the court has to dispose of the same before proceeding with the trial. The said judgments do not help the petitioner as the trial court has first dismissed the application and only thereafter, proceeded to direct further trial of the matter.

7. The petition is without any merits and the same is accordingly dismissed.

JAYANT NATH, J.

AUGUST 23, 2016
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