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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 64/2016
IQBAL SINGH

..... Petitioner

Through Mr.R.S.Tomar, Advocate.

versus

BALJEET SINGH & ANR

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **02.05.2016**

C.M. No.16060/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

C.R.P. 64/2016 & C.M. No.16059/2016 (stay)

Petitioner is aggrieved by the order dated 11.01.2016 vide which the application filed by the defendant under Order VII Rule 11 of the CPC as also his objections raised qua the jurisdiction of the Court had been decided by the impugned order.

Record shows that there were two suits filed by the parties. The lead suit was suit No.330/2015 in which the order was passed. Taking care of the contentions raised in the connected suit i.e. the suit no.331/2015, it was in suit no.331/2015 that defendant no.1 (petitioner before this Court) had filed an application under Order VII Rule 11 of the CPC.

Record discloses that the present suit is a suit for cancellation

of an allotment of the suit land which according to the plaintiff had been on the basis of misrepresentation and fraud. The suit is a suit for declaration, mandatory and permanent injunction. The plaint discloses that Maina Devi expired on 18.5.1998 leaving behind a will dated 04.4.1996 in favour of the plaintiff as his legal heir. Defendant nos.2 to 5 are legal representatives of Mange Ram. The cause of action has been described in para 24 of the plaint. As per the averments made in the plaint, the cause of action for filing the present suit arose on 10.11.2006 when the plaintiff received a letter from defendant no.3 and then the plaintiff learnt about the size of the plot allotted to their mother and thereafter the cause of action arose when the plaintiff came to know that the defendants had fixed the date of 09.12.2016 for dispossession of the plaintiff. The prayer made in the plaint is for declaration declaring that the will executed by Smt. Sita Singh be declared null and void and share of the plaintiff be determined; simultaneously the allotment of plot in favour of defendant no.1 be cancelled.

In the course of these proceedings, application under Order VII Rule 11 of the CPC came to be filed (in suit No.331/2015 by the petitioner/defendant no.1) Submission was that the plaint is liable to be rejected in view of Section 3 of the Limitation Act as also the bar of Order II Rule 2 of the CPC as in earlier proceedings in which the plaintiff was a party no such objection has been raised by him. In the reply filed by the plaintiff to the aforementioned application he has denied that he had appeared before the Nodal Officer in the connected

proceedings. His submission is that plaint is not liable to be rejected under Order II Rule 2 of the CPC; so also under the objection of the limitation.

Impugned order suffers from no infirmity. The Trial Court has correctly noted that to decide an application under Order VII Rule 11 of the CPC it is only the averments made in the plaint which have to be looked into. The averments in the plaint and the cause of action have been detailed supra. The cause of action according to the plaintiff arose in 2006 when he received a notice from defendant no.3 informing him about the plot size as also the subsequent action of dispossession of the plaintiff. The impugned order had noted that the cause of action of the plaintiff is based upon a will. The judgment relied upon by the petitioner/defendant in the Trial Court titled Airport Authority of India Vs. Karan Singh & Ors. 2007 (Vol.6) AD, Delhi had been rightly distinguished. It had been noted that when there is a dispute about the allotment of the revenue land based upon a will and the contention is fraud, the Civil Court would have jurisdiction to deal with such an issue.

No interference is accordingly called for. Petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MAY 02, 2016/ndn