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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 02.09.2016

+ C.R.P. 137/2016

YOGESH SHARMA Petitioner

Through: Mr. Girish Malhotra & Mr. Pankaj Kumar
Rajan, Advocates.

versus

RAJ BALA & ORS Respondents

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

C.M. No.32022/2016 (for exemption)

Allowed, subject to all just exceptions.

C.R.P. No.137/2016 & C.M. No.32023/2016 (for stay)

1. By the present petition, the petitioner seeks to impugn the order dated 8.6.2016 by which the application of the petitioner under Order VII Rule 11 CPC was dismissed.
2. The plaintiffs/respondent Nos.1 to 4 filed a suit for declaration, possession and permanent injunction. A perusal of the plaint shows that the plaintiff/respondent Nos.1 to 4 claim title from the predecessor-in-interest, Om Prakash, who is said to have possessory rights on the land situated in the revenue estate of village Tuglaqabad from the recorded owner Hansraj Dhawan on 30.10.1984. The plaint also avers that the predecessor-in-interest of respondent Nos.1 to 4

was in possession of the land during his lifetime and after his demise, the suit property has been in actual physical possession of respondent Nos.1 to 4. It is further averred that defendant Nos.1 and 2, namely, the petitioner and respondent No.5, in order to grab the plot, have mischievously and fraudulently got prepared some documents, that is, GPA, agreement to sell, affidavit, etc. which are forged and fabricated. It is averred that defendant No.1 cannot get a better title than the seller, that is, defendant No.2. Hence, the plaintiff seeks a decree of declaration that the documents fraudulently executed by defendant No.2 in favour of defendant No.1 dated 29.11.2001 are null and void. A decree of possession is also sought against the defendant directing them to handover the vacant and peaceful possession of the suit property.

3. The trial court by the impugned order noted the submission of the petitioner that the *iqrarnama* had no legal sanctity, a suit for permanent injunction filed by the plaintiffs based on the same has already dismissed and that the present suit has been filed beyond the period of limitation as the relief of declaration is barred by limitation. It was stated that the suit is filed beyond period of three years from the alleged knowledge of the plaintiff of the documents. The trial court concluded that the present suit is not filed for declaration but also for possession. It relied upon the judgment of this court in *Ashok Kumar vs. Mohd. Rustam & Anr.*; R.F.A. No.420/2015 decided on 22.1.2016 to conclude that as the respondents No. 1 to 4/plaintiffs had also sued for possession on the basis of title, the limitation for the relief of possession would apply and dismissed the application.

4. The learned counsel for the petitioner has taken me through the judgment dated 30.9.2013 where the suit filed by the plaintiff/respondent Nos.1 to 4 was dismissed. He relies upon an observation made in para 11 where it is stated that the petitioner's (respondent Nos.1 to 4 herein) entire case is based on an agreement/*iqrarnama* by Hans Raj Dhawan in favour of Om Prakash and that the *iqrarnama* does not bear the signatures of Om Prakash. He also submits that the judgment of this court in *Ashok Kumar's* case (*supra*) does not in any manner help the case of respondent Nos.1 to 4.

5. As far as the reliance of the petitioner on the judgment dated 30.9.2013 is concerned, it is entirely misplaced. The observations which are relied upon were actually made in the course of adjudication of an application under Order 39 Rule 1 & 2 CPC filed by respondent Nos.1 to 4 which was dismissed. Against the same, an appeal was filed and these observations were recorded by the appellate court while dealing with the judgment of the trial court. It is clear that these observations are only for the purpose of determining a *prima facie* case and do not form the backbone of the judgment of the suit. The suit was dismissed as it was a suit for permanent injunction and the trial court in that suit came to the conclusion that the issue whether the defendants therein were owners or not, does not arise for adjudication as it was the admitted contention of respondent Nos.1 to 4 that they were not in possession. The trial court concluded that hence, the said respondent Nos.1 to 4 (plaintiff therein) were not entitled to the relief claimed.

6. As far as the judgment of this court in *Ashok Kumar's* case (*supra*) is concerned, this court had held relying upon the judgment of the Supreme Court in *Ananthula Sudakar vs. P. Buchi Reddy*; (2008) 4 SCC 594 held that where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession is the remedy and where the plaintiff's title is not in dispute, he has to sue for possession.

7. In the present case, the plaintiffs/respondents No. 1 to 4 claim that their predecessor-in-interest-Sh. Om Prakash purchased the possessory rights of the land in question from Sh. Hansraj Dhawan vide agreement dated 31.10.1984. The said predecessor-in-interest is said to have been in possession of the property in his lifetime and had also erected a boundary wall. Defendant No.1/petitioner is said to have forcefully taken over the possession of the suit property. It is further stated in the other suit filed by respondents No.1 to 4/plaintiffs for permanent injunction, the petitioner filed a written statement along with some forged and fabricated documents such as GPA, Agreement to Sell, Will dated 29.11.2001 and in the said documents, defendant No.2/respondent No.5 was shown to be the owner of the property. Hence, it is claimed that the said petitioner and respondent No.5 in order to grab the suit property have collusively and illegally got the said documents prepared and the same are executed by a person who has no right or title in the suit property and hence, respondent No.5 cannot transfer any right or interest in favour of respondent No.1. Clearly, the claim for possession made by respondents No. 1 to 4 is based on independent title. It is not dependent on the declaration that

the documents relied upon by the petitioner be declared null and void. In any case, in view of the judgment of *Ashok Kumar vs. Mohd. Rustam & Anr. (supra)*, the issue as to whether a cloud is raised over the title of respondents No.1 to 4 cannot be concluded on a mere reading of the plaint filed by respondents No. 1 to 4. It is settled law that while considering an application under Order 7 Rule 11 CPC only the averments in the plaint and accompanying documents have to be taken into account. Even otherwise, part of a plaint cannot be rejected under Order 7 Rule 11 CPC.

8. There is no merit in the present petition. Accordingly, the petition is dismissed.

JAYANT NATH, J.

SEPTEMBER 02, 2016
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