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

+ C.R.P. 135/2016

GIAN CHAND GARG

..... Petitioner

Through: Mr. Sandeep Sharma & Mr. Amit
Choudhary, Advocates.

versus

RAJ KUMAR & ORS

..... Respondents

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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30.08.2016

C.M. No.31542/2016 (for exemption)

Allowed, subject to all just exceptions.

C.R.P. No.135/2016

1. By the present petition, the petitioner seeks to impugn the order dated 4.6.2016 whereby his application under Order VII Rule 11 read with Section 151 CPC was dismissed. The plaintiff has filed a suit for recovery of possession, arrears of rent and permanent injunction.

2. The limited facts relevant for the present are that the petitioner was inducted as a tenant in 1994. He has been paying to the respondent for this period. Sometimes in 2010, some sales deeds have been executed in his favour on the basis of which the petitioner now claims title to the suit property.

3. The trial court held that the defendant/petitioner cannot seek rejection of the plaint on the ground that the plaintiff/respondent has not been able to prove the title of the suit property. It is also noted that in the plaint, the plaintiff/respondent has sought eviction of the petitioner for non-payment of rent. In view of Section 116 of the Evidence Act, the respondents are held to be the landlords and the trial court concluded that cause of action is spelt out in the plaint.

4. The petitioner contends that the plaint does not disclose a cause of action. A perusal of the plaint shows that apart from many other pleas, the respondent/plaintiff has raised the plea that since 1945, the predecessor of the respondent declaring himself as the owner of the said property, has been using the property as the owner. There has been no objection from the persons who have now allegedly executed a sale deed in favour of the petitioner. Further, it is alleged that the right, title or interest in the said property of the said persons, who executed the sale deed has extinguished long back as since 1945 they have not taken any action to get the respondent/predecessor evicted.

5. The submission of the learned counsel for the petitioner is that the respondent/plaintiff cannot rely on adverse possession to file a suit as is done in the present case. He has relied upon the judgment passed in *Annakili vs. A. Vedanayagam & Ors.*; AIR 2008 SC 346. The reliance is misplaced. That was a case where the court has clearly held that adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a

period of 12 years. The case was decided on the facts of the case. There the appellant had filed a writ petition where no claim for any independent right on the basis of adverse possession was pleaded. Based on the judgment of the Division Bench in that writ petition, the Supreme Court held that the same operates as *res judicata* as the finding with regard to the title of the respondent had attained finality.

6. The plea of adverse possession is based on Article 65 of the Schedule to the Limitation Act, 1963 and Section 27 of the Limitation Act. Section 27 states that at determination of the period limited to any person for instituting a suit for possession of any property, his right to such property shall stand extinguished. The plaint states a cause of action.

7. There is no merit in the present petition and the same is dismissed.

JAYANT NATH, J.

**AUGUST 30, 2016
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