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

+ RSA 10/2016

SURESH CHAND

..... Appellant

Through: Mr. Vivek Kumar, Advocate

versus

LEELA DEVI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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11.01.2016

C.M. No.931/2016 (for condonation of 291 days delay) & C.M. No.932/2016 (for condonation of 95 days delay in re-filing)

1. The aforesaid applications have been filed to seek condonation of delay in initial filing as well as condonation of delay in re-filing the appeal as noticed above. Since I have heard learned counsel for the appellant on merits as well and I am not inclined to issue notice on the appeal itself, I see no purpose in issuing notice in the application seeking condonation of delay.
2. The present second appeal has been filed to assail the judgment and decree passed by the First Appellate Court, namely, the learned ADJ-02, Shahdara, Karkardooma Courts in RCA No.47/2014, whereby the First Appellate Court has allowed the first appeal preferred by the

respondent/defendant and set aside the judgment and decree dated 19.04.2012 passed by the Trial Court, namely, the learned JSCC:ASCJ cum Guardianship judge (NE), Karkardooma Courts in Suit No.219/2008 filed by the appellant/plaintiff. The said suit had been filed by the appellant/plaintiff to seek the reliefs of possession, permanent and mandatory injunction and mesne profits.

3. The case of the plaintiff in the suit was that he had been allotted the suit property bearing B-3/87 admeasuring 22.5 sq. yds. at Nandnagri by the DDA on leasehold basis. The plaintiff claimed that since he was leaving for his village, he inducted the defendant as a licensee. However, when the plaintiff returned from his village, he found that defendant no.1 had illegally constructed a room in the suit property after demolishing the kacha room and he also refused to hand over possession of the property to the plaintiff on demand. The plaintiff had to live on a rented accommodation on a monthly rent of Rs.1,200/- on account of the refusal of defendant no.1 to vacate the suit property. The plaintiff also stated that defendant no.1 raised further construction on the suit property upto second floor illegally and unauthorisedly without the previous permission of the plaintiff. The plaintiff further stated defendant no.1 also got transferred the suit property in her name illegally and got installed the electricity connection in the said property unauthorisedly without permission or consent of the plaintiff after forging the documents relating to the suit property.

4. The plaintiff served a legal notice dated 01.11.2007 terminating the license of defendant no.1 and demanding possession. Since the respondent no.1 failed to deliver possession, the plaintiff filed the suit, inter alia,

claiming damages @ Rs.5,000/- p.m. towards use and occupation of the suit property by the defendants.

5. The defendant contested the suit by filing a written statement. Defendant no.1 claimed that the plaintiff had entered into an agreement with him on 01.12.1990 by executing a general power of attorney, agreement to sell and receipt for an amount of Rs.15,000/-. The possession was handed over by the plaintiff to the defendant no.1 on the same day. Consequently, the plaintiff had no right, title or interest in the suit property. It was not denied that the suit property had been allotted by the DDA to the plaintiff. The defendant also claimed that the suit was barred by limitation.

6. The Trial Court decreed the suit on the premise that the documents relied upon by the defendant were merely notarised general power of attorney, agreement to sell and receipt as Ex. DW-1/1 to DW-1/3. Since immovable property could not be transferred except by way of a registered instrument, it was held that the title of the property did not vest in the defendants. On the aspect of limitation, the Trial Court held that the plaintiff had averred that the defendant had repeatedly been assuring the plaintiff that possession would be delivered to the plaintiff. Consequently, the suit was held to be not barred by limitation and it was decreed.

7. The First Appellate Court has reversed the said judgment and decree. The First Appellate Court has held that the suit was barred by limitation, since, admittedly, the defendant was in use and occupation of the suit premises since 1990, whereas the suit had been filed only in the year 2008.

8. The submission of learned counsel for the appellant is that the suit of the plaintiff/appellant was not barred by limitation since the defendant had

been giving assurances to the plaintiff that he would vacate the suit property.

9. I do not find any merit in this submission of learned counsel for the appellant for the reason that the defendant, even according to the plaintiff, ostensibly exercised the right of an owner to the knowledge of the plaintiff right from the beginning in the year 1990 itself. The plaintiff has claimed that when he returned from his village, he found temporary structure/jhuggi constructed by the plaintiff demolished and instead a pucca construction existed on the suit property. This clearly demonstrates the intention of the defendant to exercise the ownership rights over the suit property. Thus, the plaintiff was well aware and conscious of the right asserted by the defendant in the suit property.

10. The plaintiff himself stated that the defendant raised further construction on the suit property without his consent and even obtained electricity and other connections in the suit property without his consent. Once again, this demonstrates the exercise of ownership rights by the defendant to the knowledge of the plaintiff. The plaintiff also averred that the defendant had forged and fabricated documents. However, the plaintiff did not seek to assail the said documents or seek their cancellation.

11. The knowledge of the plaintiff with regard to assertion of ownership rights by the defendant of the suit property arose in the year 1990. Clearly, the defendant's possession of the suit property was hostile to the plaintiff's title and, therefore, adverse to the title of the plaintiff. The suit was filed only in the year 2008. Thus, the same was clearly barred by limitation. I may also observe that the Trial Court did not disbelieve the documents set up by the defendant, namely, Ex. DW-1/1 to DW-1/3. No doubt, the said

documents would not transfer the title of the suit property to the defendant. However, in the light of the fact that the agreement to sell was executed between the parties, whereunder possession was claimed to have been transferred to defendant no.1, the defendant no.1 was entitled to protect his possession by virtue of Section 53A of Transfer of Property Act.

12. In these circumstances, I find no merit in the present appeal and the same is, accordingly, dismissed. The aforesaid applications are also, accordingly, dismissed.

VIPIN SANGHI, J

JANUARY 11, 2016

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