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

+ C.R.P. 153/2017

VIJAY KHURANA

..... Petitioner

Through: Mr. Mayank Wadhwa and Ms. Nidhi
Saini, Advs.

versus

AJIT KUMAR CHAWLA

..... Respondent

Through: Mr. Mohan Shandilya with Ms. Ananya
Bhattacharya, Adv alongwith respondent in
person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.08.2017

1. In pursuance to the orders dated 14th July, 2017 and 2nd August, 2017 the parties have appeared in person. They have been unable to resolve their disputes amicably amongst themselves and before the court also both have taken an unreasonable stand.
2. It appears that both want to keep themselves busy with the litigation.
3. The counsel for the petitioner has been heard.
4. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 5th May, 2017 of the Court of learned Additional District Judge (ADJ)-05, South District, Saket Courts, New Delhi) of dismissal of the application filed by the petitioner / defendant under Order VII Rule 11 of the CPC for rejection of the plaint in the suit for recovery of possession of immovable property, *inter alia* on the ground of

the under-valuation of the relief by undervaluing the property of which possession is sought.

5. The counsel for the petitioner/defendant has raised four arguments for rejection of the plaint in the suit from which this petition arises.

6. Firstly, attention is drawn to para 3 of the plaint and it is argued that the respondent/plaintiff therein has described himself as owner of property bearing No.A1/10, First Floor, Safdarjung Enclave, New Delhi-110029 alongwith a servant quarter on 3rd Floor thereof and has sought relief of possession thereof without giving the area of the property or the boundaries of the property.

7. Secondly, it is contended that in the cause of action paragraph 14 of the plaint, the respondent/plaintiff has vaguely stated that the respondent/plaintiff visited the property on 6th December, 2015 and found the petitioner/defendant present therein without any lawful basis. It is argued that the suit under Section 6 of the Specific Relief Act, 1963 could have been filed within six months only and was filed in February, 2016. On enquiry as to how the suit, even if to be treated under Section 6 of the Specific Relief Act, would be barred, it is argued that the respondent/plaintiff never visited the property on 6th December, 2015.

8. The third contention is that the suit is valued for the relief of possession of Rs.45 lakhs when the valuation of the property as per circle rates is approximately Rs.2.5 crores.

9. The fourth and last contention is that the respondent / plaintiff has concealed the material facts.

10. No merit is found in any of the aforesaid contentions.

11. The property, for possession where of the suit is filed, is sufficiently identifiable from the description in para 3 of the plaint as hereinabove recorded and it is not incumbent to give area or boundaries of the property as may be necessary in the case of open land surrounded by other open land and the objection in this regard is misconceived.

12. As far as the second contention is concerned, not only is it based on a misconception that the suit filed is under Section 6 of the Specific Relief Act but even otherwise the contention that the respondent /plaintiff never visited on 6th December, 2015 raises a triable issue and which cannot be the subject matter of Order VII Rule 11 of CPC. Attention of the counsel has been drawn to Article 64 of the Schedule to the Limitation Act which provides limitation for a suit for possession of immovable property on the basis of prior possession, of 12 years, commencing from the date of dispossession. On a reading of plaint, no averment of the suit being under Section 6 of Specific Relief Act is found. Rather, in para 11 of the plaint, the respondent/plaintiff has pleaded the suit to be on the basis of title.

13. As far as the third contention is concerned, the reliance by the counsel for the petitioner on ***Habil Khorakiwala Vs. Sara Taizoon Khorakiwala*** 2016 SCC OnLine Del 2719, in the face of the dicta of the Division Bench in ***Manu Narang Vs. The Lt. Governor, Government of National Capital Territory of Delhi*** 2015 SCC OnLine Del 14395 and ***Amit Gupta Vs. Government of NCT of Delhi*** 229 (2016) DLT 385 to the effect that the circle rates raise a rebuttal presumption, is also not apposite. In the light of the said judgments, the aspect of valuation would also be a matter of trial.

14. The fourth contention aforesaid, also raises disputed questions of fact and the question, whether there has been any concealment or not or whether on account of any concealment, rights in immovable property can be defeated, is also a question which would have to be determined.

15. Resultantly, the petition fails and is dismissed.

No costs.

The Trial Court records requisitioned in this Court be sent back forthwith.

RAJIV SAHAI ENDLAW, J.

**AUGUST 03, 2017
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