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

\+ **<u>RFA No. 770/2017</u>**

% **Reserved on: 11th September, 2017**
Pronounced on: 15th September, 2017

RAJPAL SINGH & ORS. ..... Appellants

Through: Mr. A.K. Singla, Sr. Advocate with Mr. Rahul Shukla, Advocates.

versus

M/S INDRAPRASTHA BUILDER PVT. LTD. ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J</u>

<u>C.M. Appl. No. 32652/2017 (for exemption)</u>

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

<u>RFA No. 770/2017 and C.M. Appl. No. 32651/2017 (for stay)</u>

1. This Regular First Appeal is filed under Section 96 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the trial court dated 1.6.2017 by which the trial court has dismissed the suit filed by the appellants/plaintiffs under Order XII Rule 6 CPC.

The suit has been dismissed as being barred by the principle of *res judicata*, inasmuch as, the appellants/plaintiffs claim that they are owners/landlords of the suit premises but the appellants/plaintiffs in earlier proceedings under the Delhi Rent Control Act, 1958 have been held not to be landlords and that there is no relationship of landlord and tenant between the parties in terms of the judgment dated 7.12.2002 in Eviction Petition No. 176/1995. Appeal against the judgment dated 7.12.2002 filed by the appellants/plaintiffs was dismissed by the Rent Control Tribunal vide its judgment dated 5.9.2011. Subject suit was, therefore, dismissed by the trial court by holding that though the appellants/plaintiffs claim to be the owners/landlords of the suit premises, however, this finding has been held against them in earlier proceedings culminating in the judgments dated 7.12.2002 and 5.9.2011, and which judgments though were passed by the Rent Controller and Rent Control Tribunal under the Delhi Rent Control Act, however, such judgments will operate as *res judicata* because of Section 11 Explanation VIII CPC which provides that an issue heard and finally decided by the court of limited jurisdiction competent to decide such issue will operate as *res judicata* in a subsequent suit.

2. The facts of the case are that the subject suit was filed by the appellants/plaintiffs seeking the reliefs of declaration, possession and recovery of moneys. The prayer clauses of the plaint read as under:-

> "**PRAYER**
> In the facts and circumstances above-stated, it is, therefore, respectfully prayed that the Hon'ble Court may be pleased to grant:
> a) Decree of declaration in favour of plaintiffs and against the defendant company, thereby declaring that relationship of landlord and tenant, was created between Plaintiffs' predecessors succeeded to by Plaintiffs and Defendant Company, in accordance with Lease Agreement dated 10th May 1980, with effect from 26th February 1983 in respect to premises, comprising about one half area of basement, ground floor, mezzanine floor, first floor, second floor, third floor and fourth floor, having area of 10000 sq.ft in property bearing No. E-4/11, Jhandewalan Extension, New Delhi as recognized and accepted in Defendant's Lease Agreement dated 26th February 1983 which came to end upon defendant denying plaintiff's title to the above property, and, by way of consequential relief, pass order of injunction against defendant company restraining defendant from transferring, parting with possession of premises let out to them, to any other person other than the plaintiffs, in the facts and circumstances of the case.
> b) Decree for possession be passed in favour of Plaintiffs and against defendant company, in respect of Suit Property comprising about half the area of basement, ground floor, mezzanine, first, second, third, fourth floor and terrace floor, having area of 10000 sq. ft. situated at E-4/11, Jhandewalan Extension, New Delhi more clearly described in plan enclosed to defendant's lease deed dated 26th February 1983 registered as No. 1786 Additional Book No. 1 Volume no. 4823 Pages 79-85 with the office of Sub Registrar, New Delhi as the sublet area, produced with the plaint;
> c) Decree for money in favour of plaintiffs and against the defendant company in the sum of Rs.1,34,03,888/- (Rupees One Crore Thirty Four Lacs Three Thousand Eight Hundred Eighty Eight only), alongwith decree of mesne profits, pendentelite and future recoverable upto recovery of premises from defendant company under prayer clause (b) by holding enquiry in accordance with the provisions of Order 20 Rule 12 CPC.
> d) Award interest on above sums and cost of suit in favour of the plaintiffs and against the defendant;
> e) Any other or further order(s) considered just, fit and proper in the facts and circumstances of the case."

3. In essence the cause of action pleaded in the subject plaint is for the appellants/plaintiffs to succeed in possession and *mesne* profit, etc. as per Section 111(g) of the Transfer of Property Act, 1882, which provides that if a tenant denies title/ownership of the landlord of the tenanted premises, then the tenancy comes to an end. Relevant paras of the cause of action of the plaint with respect to Section 111(g) of the Transfer of Property Act are paras 12 and 27 and which paras read as under:-

> "12. That in eviction proceedings instituted by plaintiffs' ancestors seeking enforcement of lease terms, though defendant company recognized and accepted that they have sublet the premises in favour of Bank, in pursuance of right held by them under covenants of Lease Agreement dated 10th May 1980 (as given in the Lease Agreement signed by them with the Bank), but defendant denied the relationship of landlord and tenant with Plaintiff's ancestors to avoid their liability to pay rent to plaintiff's ancestors, in accordance with terms of Lease Agreement dated 10th May 1980. By doing so, defendant forfeited right (under Section 111(g) of Transfer of Property Act) to hold possession of portion of property in status of a tenant.
>
> xxxxx xxxxx xxxxx
>
> 27. That cause of action arose to Plaintiffs as above stated. It arose with relationship of landlord and tenant arising between plaintiffs and defendant company on terms stated in Agreement to Lease dated 10th May 1980 commencing 26th February 1983 at monthly rate of Rs.30,000/- per month. It arose with defendant company while admitting to the transaction described in abovesaid lease agreement dated 10th May 1980 while making a sub tenancy of premises let out in favour of Oriental Bank of Commerce on terms and conditions stated in lease deed dated 26th February 1983 made with the bank. It arose with defendant company repudiating the relationship of landlord and tenant with plaintiffs in legal proceedings filed by plaintiff's predecessor-in-interest. It arose with said relationship coming to end by virtue of Section 111(g) of the Transfer of Property Act. It arose with adjudications made on above relationship in legal proceedings decided by Rent Control Authorities. It arose with defendant

company obtaining right to gain possession of premises sublet by them to the bank in proceedings taken by way of Suit No. 1200/1998. It arose with Plaintiffs becoming entitled to recover possession of premises from defendant company upon their becoming trespasser in property under the provisions of Section 111(g) of the Transfer of Property. It arose with plaintiffs becoming entitled to secure compensation for the preceding 36 months at rate the defendant company earned by subletting the premises to the bank. It arise with proceedings detailed in para 5 onwards of the plaint. Cause of action for filing the present suit is continuing."

4. In order to understand the issue, facts and the relationship between the parties emanating from various documents executed between the parties is required to be noted at this stage. Appellants/plaintiffs were perpetual lessees from the Delhi Development Authority (DDA) in terms of perpetual lease deed dated 16.11.1973 with respect the suit property bearing no. E-4/11, Jhandewalan Extension, New Delhi admeasuring 297 sq. yards. In the perpetual lease deed executed by DDA in favour of the appellants/plaintiffs there was a usual clause that the perpetual lessee/appellants/plaintiffs will not sell, transfer or part with possession, etc. of the suit property without taking permission of the DDA. In order to avoid this liability of payment of unearned increase to DDA various perpetual lessees of plots in Delhi have been entering into different types of documentations which would have the effect of strictly not transferring title of the land. One such method adopted by

the perpetual lessees in Delhi was to enter into an agreement for construction for the plot and thereafter make the builder owner of the constructed portion and licensee of the land or create the lease of the constructed property in favour of the builder or his nominee and further giving to such builder or his nominee right to sub-lease the constructed portion. In the present case appellants/plaintiffs entered into an agreement to construct with the builder Sh. Satish Chand on 10.5.1980. Some of the relevant clauses of this agreement dated 10.5.1980 having the effect of effectively transferring half ownership of the constructed building to the builder in lieu of the builder incurring expenditure for reconstruction of the property are clauses 8, 11, 12 and 14 and which clauses of agreement dated 10.5.1980 entered into between the appellants/plaintiffs and the builder Sh. Satish Chand read as under:-

> "8. That on completion of the proposed building and in consideration of this agreement, the Owners shall be entitled to retain fifty per cent of the total area as their ownership. The Builder will be entitled to the other fifty per-cent space in the building as his ownership. The Builder may retain the said balance space or sell it to anybody he likes, the sale proceeds being the property of the Builder. There will be no sale in parts. The Owners agree to execute all necessary documents in favour of the transferees or allottees if any as may be necessary at the cost of the transferees or allottees. Similarly, the Owners may either retain the space in the building allotted to them or transfer or sell the same as they deem fit. The sale proceeds of such flats or space being the property of the Owners. The Builder agrees to execute all necessary documents in favor of the

transferees or allottees as may be necessary. If required, at the cost of the transferees or allottees. For the purpose of allotment of aforesaid fifty per-cent area, the owners will be entitled for allotment of equal area on each floor. Further, common areas like passage, staircase, lifts, shafts, open terrace, open ground, corridors, water tanks, electricity sub-station room, generator room, telephone room, guard room, estate management office etc; will not be taken into account and the said area will remain the property of the First Party and the Second Party will not claim over the said area.

11. That the Builder shall have the rights of assigning his rights under this agreement in favour of any person, firm, company or association subject only to the limitation that the transferees or assignees shall be bound by all the terms and conditions contained herein.

12. That the Owners shall not revoke or cancel this agreement in any circumstances whatsoever. The Owners undertake not to transfer, mortgage, charge or lease or in any way encumber the property, subject matter of the agreement, in any manner. If by any act or omission on the part of the Owners, the Builder is prevented or obstructed from carrying out the purpose of this agreement or the work of development and constructing of the proposed building, then the owners shall be jointly and severally responsible for indemnifying completely the Builder against all expenses, charges and damages whatsoever. Any act of the Government, any local authority or God is however accepted.

14. That for one-half portion of the building, which is to be constructed on the said land, the Owners have entered into an agreement to lease with Messrs Indraprastha Builders Private Limited.

This is the one-half portion which is to be allotted to the Builder. The portion of the building to be allotted to the Owners and the Builders are shown in the site plan attached. The Builder shall give possession directily to Messrs Indraprastha Builders Pvt Ltd; The Builder will be entitled to recover rents from Messrs Indraprastha Builders Pvt. Ltd."

5. Simultaneously, to the entering of this agreement dated 10.5.1980 between the appellants/plaintiffs and the builder Sh. Satish Chand, and pursuant to Clause 14 of this agreement dated 10.5.1980 the appellants/plaintiffs entered into an agreement to lease with the company M/s Indraprastha Builders Private Limited, the defendant in

the suit. As already stated above, the basic object of the entire documentation was to give ownership rights to the extent possible to the builder in half of the constructed area without there being a formal sale deed. In terms of the agreement to lease dated 10.5.1980 entered into between the appellants/plaintiffs and the respondent herein, the appellants/plaintiffs leased out half of the constructed area to the respondent/defendant on monthly rental of Rs.3 per sq. feet. In terms of Clause 4 of this lease agreement dated 10.5.1980 entered into between the appellants/plaintiffs and M/s Indraprastha Builders Private Limited, the respondent herein, M/s Indraprastha Builders Private Limited was entitled to further sub-let the property and collect the rent by sub-letting. This short agreement dated 10.5.1980 entered into between the appellants/plaintiffs and the respondent herein contains five clauses. This Agreement to Lease reads as under:-

> "A G R E E M E N T T O L E A S E
>
> THIS AGREEMENT TO LEASE made at NEW DELHI on this 10th day of MAY 1980, BETWEEN Sardars Bahadur Singh, Balwant Singn and Saudagar Singh, all sons of Shri Lal Singh and residents of J.J. Colony, Najafgarh Road, New Delhi, of the FIRST PART, hereafter referred to as the 'intending Lessors' (which expression shall include their heirs, successors and assign)
>
> A N D
>
> Messrs Indraprastha Builders Pvt. Ltd., a private limited company, incorporated under the Companies Act 1956 having its registered office at I, Babar Road, New Delhi, of the OTHER PART, hereinafter referred to as the 'Intending Lessee' (which expression shall include its successors,

transferees, nominees, assigns and any other company with which it might merge or amalgamate).

WHEREAS the intending Lessors above-named are the owners in possession of the Lessee rights of a plot of land measuring 248 Sq. Meters (297 Square Yards) situated in Jhandewalan Scheme 'E' commonly known as Plot No. II in Block 4.

AND WHEREAS the intending Lessors intend to construct a superstructure on the said plot of land which will comprise a Basement and Six Storeys on top.

AND WHEREAS the intending Lessors requested the intending Lessee to agree to take on lease a portion of the superstructure when constructed and completed at a monthly rental to which the intending Lessee agreed.

NOW THIS AGREEMENT WITNESSETH AS UNDER;

I. That the intending Lessors agree to give and the intending Lessee agrees to take on lease one-half of the superstructure to be constructed on the said plot of land by the intending Lessors at a monthly rental of Rs. 3/- (Rupees Three only) per Square foot from the moment the building is fit for occupation, for a period of five years with option for renewal.

2. That in consideration of this agreement and the intended lease, the intending Lessee have advanced a sum of Rs. 1,50,000/- (Rupees one Lakh and fifty thousand only) to the intending Lessors by means of cheques as under :

i) Cheque No. 687960 dated 27-3-80
on Canara Bank, Deen Daal Marg,
New Delhi, favoring Shri
Saudagar Singh .... Rs. 50,000-00
ii) Cheque No. 687961 dated 27-3-80
on Canara Bank, Deen Daal
Marg, New Delhi, favoring
Shri Balwant Singh .... Rs. 50,000-00
iii) Cheque No. 687963 dated 7-4-80
on Canara Bank, Deen Dayal
Marg, New Delhi, favoring
Shri Bhadur Singh .... Rs. 50,000-00
Total Rupees. 1,50,000-00

the receipt of which cheques the intending Lessors hereby acknowledge. This amount shall continue as interest free deposit with the intending Lessors upto the time the Lessee continues in possession in terms of the lease.

3. That the draft of the intended lease is annexed to these presents as ANNEXURE "A".

4. That the lease shall initially be for a period of five years from the date of entering into possession by the intending lessee with options to

renew it for further terms of five years at each time. The lessee shall also have the right of sub-letting.

5. That the intending Lessors undertake not to lease, deliver possession or create any charge in respect of the property in favour of any one without the express written consent of the intending Lessee and agree not to do any act or omission which will in any way jeopardize the interests of the intending lessee in this agreement and the lease in pursuance thereof."

6. Respondent acting as a beneficiary under the agreement dated 10.5.1980 entered into between it as a nominee of the builder Sh. Satish Chand and the appellants/plaintiffs had originally let out the half portion of the constructed property to Oriental Bank of Commerce and which half constructed portion had fallen to the share of the builder and the respondent. There have been various earlier litigations between the parties and all these litigations are referred to in the written statement filed by the respondent/defendant as also in para 5 of the impugned judgment of the trial court, and which para 5 reads as under:-

"5. In the written statement filed by the Defendant, it is claimed that the suit is barred under 11 of CPC read with Order 23(4)(b) of the CPC and the Plaintiffs should be precluded from instituting any fresh suit in respect of the property or such part of the claim. It is claimed that (CSDJ-19327/16) (Page No. 3 of 12) (Raj Pal Singh & Ors. v. Indraprastha Builders Pvt. Ltd.) the predecessors of the Plaintiffs filed the following suits and litigations with the following reliefs:

(1) Suit No. 2471/1998, titled as Balwant Singh & Ors v. Indraprastha Builders Pvt. Ltd. & Ors. This suit was filed on 26.09.1988 for recovery of money, based on transaction of lease from agreement dated 10.05.1980. The suit was withdrawn on 29.05.2012 without prejudice to the rights and contention to other available legal remedy;

(2) Suit No. 1333/1995 titled as Balwant Singh & Ors v. Indraprastha Builders Pvt. Ltd. & Ors. This suit was filed on 25.05.1995 for recovery of legally recoverable rent and was withdrawn on 29.05.2012, without prejudice to the rights of the Plaintiffs to avail any other available legal remedy;

(3) Suit No. 23/1994 dated 17.01.1994 was filed before the Ld. Civil Judge, seeking relief of declaration and permanent & mandatory injunction, declaring Oriental Bank of Commerce as a tenant and restraining Indraprastha Builders from claiming any rent from the premises. This suit was dismissed as withdrawn on 11.04.1994 without any liberty granted by the Court;

(4) Suit No.512/92 seeking to declare the (Raj Pal Singh & Ors. v. Indraprastha Builders Pvt. Ltd.) construction agreement dated 10.05.1980, General Power of Attorney registered on 17.06.1980 and Memorandum dated 25.01.1992 as null and void. The said suit was dismissed vide judgment and decree dated 15.04.2002 and Plaintiffs's appeal bearing RCA No.22/2002 was also dismissed on 16.03.2005;

(5) Eviction Petition No. E-176/95, titled as Balwant Singh & Ors v. Indraprastha Builders Pvt. Ltd. v. Balwant Singh & Ors under Section 14 (1)(a) of DRC Act was dismissed vide judgment dated 07.12.2002. The appeal, bearing No. 33/2009 before the Rent Control Tribunal was also dismissed vide judgment dated 05.09.2011;

(6) Suit No. 1480/83 titled as Sardar Saudagar Singh & Ors. v. MCD, for a relief of declaration and injunction to declare that the Plaintiffs are not liable to pay property tax in respect of property No. 4-E, Jhandewalan Extension, New Delhi. (7)Suit No. 246/1995, titled a Balwant Singh & Ors. v. Indraprastha Builders Pvt. Ltd. & Anr. with the relief that a decree for possession should be passed in favour of the Plaintiffs and against the Defendants. The suit was withdrawn on 09.12.2016;

(8) Suit No. 177/99 titled as Balwant Singh & Ors v. Indraprastha Builders Pvt. Ltd. & Anr. with the relief that a decree for possession should be passed in favour of Plaintiffs against the Defendants. This suit was dismissed with costs of Rs.3,000/- vide order dated 21.02.2004.

(9) Suit No. 154/1999, titled as Balwant Singh & Ors v. Indraprastha Builders Pvt. Ltd. & Anr. The suit was dismissed on 21.02.2004.

(10) Hon'ble Supreme Court's order dated 02.12.1996 in SLP (Civil) No. 4646/1996, which was disposed of with the order reading as under:

> "We have heard the learned Counsel for the petitioner. The submission of the learned counsel is that the respondents have filed another suit Original suit No.246/95 in the court of District Judge, Delhi, for recovery of possession of the premises and now there will be two independent proceedings in respect of the same premises. Shri Sachar, the learned senior counsel appearing for the respondents states that the said suit was filed after the passing of the order dated March 26, 1991 passed by the Addl. Rent Controller, and that the respondents will withdraw the

original suit No.246/95 and will proceed with the eviction petition. In these circumstances, we do not find any ground to interfere with the impugned judgment of the High Court. The special leave petition is, therefore, dismissed."

(11) One judgment, reported in 1993(45) TTJ Delhi 99 where Balwant Singh & Ors filed an appeal before the Income Tax Tribunal with the averments that they were owner of only 50% of the building and Satish Chand was the owner of half of super structure in his own right."

7. The subject suit, as already stated above, is filed on the cause of action of Section 111(g) of the Transfer of Property Act and this Section reads as under:-

> **"Section 111. Determination of lease.-** A lease of immovable property determines-
> **(g)** by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter * * *; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;"

8. Learned senior counsel for the appellants/plaintiffs has vehemently argued that the trial court has erred in dismissing the suit by holding the earlier proceedings under the Delhi Rent Control Act as being *res judicata* between the parties and it is argued that the earlier proceedings cannot be *res judicata* in view of the provision of Section 50(4) of the Delhi Rent Control Act. It is argued that as per Sub-Section (4) of Section 50 of the Delhi Rent Control Act judgments of

the Rent Controller/ Delhi Rent Control Tribunal do not operate as *res judicata* because the issue of title, i.e the issue of a title of a tenant, is only to be finally decided by the civil court. It is argued that the provision of Explanation VIII to Section 11 CPC will not apply, inasmuch as, the pre-condition for applicability of Explanation VIII to Section 11 CPC is that earlier decision has to be by a civil court whereas in the present case earlier decision is by a Rent Controller/Rent Control Tribunal and which authorities are not a civil court as per the Delhi Rent Control Act. Section 50 of the Delhi Rent Control Act and Explanation VIII to Section 11 CPC read as under:-

> "**Section 50 DRC: Jurisdiction of civil courts barred in respect of certain matters–**
> (1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant there from or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.
> (2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.
> (3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in

possession of the premises or to pay him such compensation as the Controller thinks fit.
(4) Nothing in sub-section (1) shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.

Section11 Explanation VIII CPC-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

9. In my opinion, there cannot be any cavil to the arguments urged on behalf of the appellants/plaintiffs because trial court has clearly erred in applying Explanation VIII to Section 11 CPC, inasmuch as, the said provision would only apply if the earlier decision of the Rent Controller and the Rent Control Tribunal dated 7.12.2002 and 5.9.2011 were of a civil court but those judgments are not of a civil court but are of the authorities under the Delhi Rent Control Act. Also, Sub-Section (4) of Section 50 makes it clear that the decision of the authorities under the Delhi Rent Control Act will not operate as *res judicata* between the parties in a civil court and the issue of title, i.e including the issue of tenancy title, will finally be decided by the civil court. To that extent the judgment of the trial court is, therefore, illegal and is bound to be set aside. However, that is not the end of the matter as the subsequent discussion will show.

10. I put it to the learned senior counsel for the appellants/plaintiffs that the subject suit has admittedly been filed in the year 2012 (May 2012) and that the plaint (paras 12 and 27 thereof) is silent as to when the cause of action accrued under Section 111(g) of the Transfer of Property Act. This query was posed to the learned senior counsel for the appellants/plaintiffs in view of Section 3 of the Limitation Act, 1963 and which provides that a suit can only be entertained by the court if it is within limitation and courts have to *suo moto* take notice of the period of limitation as provided under the Limitation Act. On a query to the learned senior counsel for the appellants/plaintiffs for elaboration of the cause of action in paras 12 and 27 of the plaint which have been reproduced above, learned senior counsel for the appellants/plaintiffs concedes that denial of title of the appellants/plaintiffs in the rent control proceedings took place approximately in the year 1987 when the written statement was filed by the respondent/defendant denying the title of the appellants/plaintiffs in the suit property.

11. A suit for recovery of possession based on title has necessarily to be filed at the very maximum within 12 years of arising

of a cause of action as per Article 65 of the Limitation Act. Once the period of 12 years expires, then in fact the right and cause of action itself gets extinguished, in view of Section 27 of the Limitation Act. Section 27 and Article 65 of the Limitation Act read as under:-

> "**Section 27.Extinguishment of right to property.-**At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Article 65

65.	For possession of immovable property or any interest therein based on title. *Explanation.*- For the purposes of this article- (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchasers shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

12. The subject suit has admittedly been filed in May 2012 i.e more than 12 years after the year 1987 and which period of 12 years had expired in the year 1999. The subject suit filed in May 2012 has

been filed after 25 years of arising of the cause of action in the year 1987 and therefore, clearly the subject suit is barred by Article 65 of the Limitation Act and more importantly by applying Section 27 of the Limitation Act, the right, title and interest of the appellants/plaintiffs in the suit property would get extinguished as against the respondent/M/s Indraprastha Builders Private Limited.

13. I am entitled to sustain the conclusions of the trial court on totally independent reasoning not found in the judgment of the trial court by virtue of Order XLI Rule 24 CPC. In the present case, the suit was dismissed at the stage of pleadings, and therefore, this Court can decide the fate of the suit at the stage of pleadings by taking admitted facts and which admitted facts show that the cause of action under Section 111(g) of the Transfer of Property Act arose in the year 1987, and therefore, suit filed in May 2012 after around 25 years is clearly barred by limitation.

14. In view of the aforesaid discussion, the impugned judgment of the trial court dated 1.6.2017 is sustained, however, on account of the different reasoning than as given by the trial court, and by holding that the suit plaint is barred by limitation and in fact that

any rights of the appellants/plaintiffs in the suit property would stand extinguished by virtue of Section 27 of the Limitation Act.

15. Appeal is accordingly dismissed, leaving the parties to bear their own costs.

SEPTEMBER 15, 2017 **VALMIKI J. MEHTA, J**

AK/Ne