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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Pronounced on:18.09.2017

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CM(M) 1179/2015 & CM No.29169/2015

IRMEET SINGH KOHLI & ORS

..... Petitioners

Through Mr.Ajay Kapur, Sr.Advocate with
Mr.Harshbir Singh Kohli, Adv.

versus

ASHOK KUMAR BATRA & ANR

..... Respondents

Through Mr.Samrat K.Nigam and
Mr.Abhimanyu Walia Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

CM(M) 1179/2015 & CM No.29169/2015

1. This petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 23.12.2014 passed by the learned trial court dismissing the application under Order 7 Rule 11 CPC filed by the petitioners/defendants.

2. Brief relevant facts are that the respondents/plaintiffs have filed a suit for specific performance and injunction on 18.08.2011. As per the suit, it is claimed that sometimes in November, 1984 the respondents/plaintiffs sought physical possession of the suit property being 3rd Floor, Flat No.3, formerly known as Scindia House, Connaught Place, Janpath, New Delhi and now known as Atma Ram Properties Pvt. Ltd. It is urged that they got physical

possession based on an oral agreement to sell between the parties. It is urged that the petitioners/defendants purchased the said property on 14.06.1984 and intended to sell the same property. Hence, in the presence of a common friend Sh.Manmohan Khanna, the deal was finalised in the month of December, 1984 for a total sum of Rs.10 lacs. A sum of Rs.7.50 lacs was paid to the petitioners as part payment. There is no plea of any receipt being executed as evidence of payment of the said amount. The balance Rs.2.50 lacs was to be paid at the time of execution of the sale documents. It is further urged that agreement to sell and other title documents could not be executed at that time since petitioner Nos.2 to 5(defendants No.2 to 5) who also had title qua the suit property, were minors and it was represented by father of respondent No.2 Sh.Balbair Singh that a petition filed by the petitioners was pending disposal before the District Judge, Delhi seeking permission to sell the property on behalf of the minors. It is stated that the respondents thereafter kept on inquiring from Sh.Balbair Singh about the fate of the petition pending in the court of District Judge. It is further stated that the petitioner Sh.Balbair Singh purported to execute a lease deed in December, 1984 (29.12.1984). Though the instrument was executed as lease deed but as per the stipulations contained therein, the respondents/plaintiffs can use and enjoy the premises as owner thereof. The lease deed provides power to sub-let and that the tenancy cannot be terminated. It also purports to put an obligation to pay rent of Rs.2,500/- per month on the respondents because a sum of Rs.2.50 lacs remained outstanding. The sum of Rs. 2,500/- which was though described as rent was actually interest payable by the respondents for the outstanding dues. It is further urged that somewhere in the year 2007, the petitioners suddenly stopped receiving the said payment

of Rs.2,500/- per month. It is further urged that the respondents were shocked when pursuant to a summon received from the Additional Rent Controller, they learnt that the petitioners had filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as 'the Act'*). It was on receipt of a copy of the eviction petition, it is claimed that the respondents came to know that the petitioners are trying to wriggle out of the contractual obligation of executing the sale deed of the property in favour of the respondent.

3. The petitioners filed an application under Order 7 Rule 11 CPC wherein various pleas were raised as to why the plaint is liable to be rejected. It was urged that the suit is without cause of action as there is no contract/agreement to sell, nor essential ingredients as provided under a valid agreement to sell exist. It was secondly urged that the suit is barred by limitation. It further urged that suit is not maintainable in terms of Sections 91 and 92 of the Indian Evidence Act. It is also stated that the suit is barred under the provisions of Sections 23, 25 and 29 of the Contract Act and Section 16 of the Specific Relief Act. Other pleas are also taken.

4. The trial court by its impugned order dismissed the application of the petitioner under Order VII Rule 11 CPC. The trial court held that the agreement to sell is not documented. Hence, it is not proper to look at the lease deed to discover the ingredients of the agreement to sell. It also noted that an issue of limitation would be a mixed question of law and fact and hence at this stage it cannot be said that the suit is barred by limitation. The trial court hence rejected the application of the petitioner.

5. I have heard the learned counsel for the parties.

6. The learned counsels for the parties have repeated their submissions

stated in the pleadings. The learned senior counsel appearing for the petitioners has urged that the alleged oral agreement to sell executed in 1984 is patently time barred and no decree for specific relief can be sought in the suit. Reliance is placed on the judgment of this court in the case of ***Ashok Malik v. Ramesh Malik, 150 (2008) DLT 693*** to contend that the suit is barred by limitation under Article 54 of the Limitation Act and the trial court has wrongly dismissed the application of the petitioner.

7. The facts as pleaded in the plaint by the respondent/plaintiff make interesting reading. The respondent claims that he entered into an oral agreement to sell in 1984 whereby he agreed to purchase the property for a sale consideration of Rs.10 lacs. He claims to have paid Rs.7.50 lacs as part consideration and claims to have taken possession of the property based on the oral agreement to sell. There is no averment about any receipt having been executed by the petitioner for the sum of Rs.7.50 lacs allegedly paid by the respondent as part consideration. Presumably no receipt was executed. He further claims that at that time, the title documents could not be executed in his favour like agreement to sell etc. as defendants No.2 to 5/petitioner No.2 to 5 were minors and that the father of defendant No.2 Shri Balbir Singh represented that he had filed a petition before the District Judge seeking permission to sell the premises on behalf of the said minors. The said Balbir Singh also represented that as soon as the said permission is granted, the necessary sale documents would be executed. As not a single document was executed in favour of the respondent, the said Shri Balbir Singh on December 2, 1984 is said to have executed an unregistered lease deed which contains stipulations which normally do not part of the lease deed. Further, the lease deed states that the respondents shall pay rent to the

petitioners at Rs.2,500/- per month. It is claimed that this was actually the interest for the outstanding remaining payment of Rs.2.50 lacs which has been withheld by the respondents. It is further claimed that till 2007, the rent of Rs.2,500/- per month has been received by the petitioners whereafter they have stopped receiving the rent.

8. As per the plaint, the suit is said to be filed within limitation as pleaded in the para relating to cause of action, which reads as follows:

“15. That the cause of action for filing the present suit arose when after the execution of the said Agreement to Sell, the plaintiffs had been requesting the defendants to execute the Sale Deed, however, the defendants, though never refuted the claim of the Plaintiffs at any point of time, kept on delaying the execution of the sale deed on one pretext or the another. The cause of action finally arose when the defendants, with malafide intentions and ulterior motives, denied the title of the plaintiffs qua the property in dispute by filing the eviction petition against the plaintiffs and thereafter, even denied the execution of the agreement to sell by and between the parties, in the counter affidavit filed by the defendants on 04.06.2011. The cause of action is continuous, recurrent and running and shall remain so till the defendants execute sale deed in respect of the suit property, in favour of the plaintiffs and further, the defendants are restrained from selling, disposing off, alienating or creating any third party right or interest in the suit property.

9. Entry 54 of the Schedule to the Limitation Act, reads as follows:

“54. **For Specific Performance of a Contract:** Three years: The date fixed for the performance, or, if no such date is fixed, when the plaintiff has a notice that performance is refused.”

Hence, in a suit for specific performance, limitation would start running from the date fixed for the performance of the agreement. Where no such date is fixed, then the period of three years would start running from

the date when the plaintiff has a notice that performance is refused.

10. The narration of facts as elaborated in the plaint would show that as per the so called oral agreement to sell, the petitioner had agreed to execute the sale deed once the permission from the District Judge was granted regarding the permission to sell the shares of the minors. No details are given of the pending petition before the District Judge.

11. Section 8 of the Hindu Minority and Guardianship Act, 1956 ('*HM&G Act*') reads as follows:

"8. (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

(4) xxx (5) xxx (6) xxx

12. Section 8(2) of the HM&G Act contemplates that the natural guardian of a Hindu minor shall not alienate the properties of the minors without the previous permission of the court and Section (3) of the HM&G Act provides that any disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) is voidable at the instance of the minor or any person under him.

13. The settled legal position is that a natural guardian can enter into an

agreement to sell for the benefit of the minor, but such agreement to sell cannot be enforceable at the instance of the purchaser in the absence of necessary permission granted by the appropriate court under Section 8 of the HM&G Act. The respondents/plaintiffs state that at the time of entering into an oral agreement to sell the necessary title documents could not be executed in favour of the respondents as the said Sh.Balbir Singh held out that an application seeking permission from the concerned court was pending for permission to sell the property on behalf of the minors, namely, petitioner Nos.2 to 5.

14. No such petition for seeking permission of the District Judge for selling the shares of minors could have remained pending for 27 years. Even otherwise in these 27 years the minors had ceased to be minors and were entitled to act on their own behalf. Alleged pendency of the application became irrelevant and infructuous. Hence, in my opinion, after a reasonable time expired from the so called oral agreement to sell of 1984, the respondents had notice of refusal on the part of the petitioners to execute the title documents as the application for permission to sell the share of the minor was infructuous and the minors had become majors. Even otherwise, the minors, who are majors now are not bound by the Agreement to Sell. It is unconceivable that the respondent believed that the petition filed before the District Judge for permission to sell was pending all these 27 years.

Further the averments in the plaint are contradictory to the un-registered lease deed admittedly executed by the parties. It is manifest from this document and the admitted fact that the respondent was paying Rs.2,500/- per month as rent to the petitioner from 1984 till 2007 and that the respondent has entered into possession of the premises based on the lease deed as a tenant at a rent of Rs.2,500/- per month.

15. It is manifest from the averments in the plaint that the respondents have waited about 27 years from the date of alleged agreement to sell to file a suit for specific performance claiming that the refusal to execute a sale deed by the petitioners has arisen in the year 2011 when the eviction petition was filed by the petitioners. It is quite clear that the suit is hopelessly barred by limitation on a meaningful reading of the plaint only and was liable to be dismissed on this ground by the trial court. Order VII Rule 11 permits dismissal of a plaint which is on the face of it barred by any law.

16. Another aspect also may be taken note of. This suit for specific performance has been filed only after the petitioners have filed an eviction petition against the respondents. It is clearly a counter blast to the eviction petition. The contentions and averments in the plaint are entirely frivolous and completely make belief. The facts speak for themselves. The suit is manifestly a gross abuse of process of the court. It is clear that the present suit is only an attempt to derail the eviction petition and to delay its adjudication.

17. A Division Bench of this court in the case of ***Aniruddha Dutta & Ors. vs. Bhawani Shanker Basu & Ors., 2012 (127) DRJ 70*** held as follows:-

“28. A Court of record has every inherent power to prevent the abuse of its process and Order 7 Rule 11 of the Code of Civil Procedure is not the complete reservoir of the power of nip a frivolous suit when it is still in the stage of infancy. The inherent powers of a Court of record, and we highlight that Section 151 of the Code of Civil Procedure does not confer, but saves the inherent power of a Court also constitutes the reservoir of the power of a Court of record to throw out vexatious suits.”

18. Similarly, the Rajasthan High Court in the case of ***Temple of Thakur***

Shri Mathuradassji vs. Shri Kanhaiyalal & Ors., 2008 (1) ILR (Raj) 619,

in para 16 held as follows:-

“16. ... If the suit is abuse of process of the court and cannot be dismissed under Order 7 Rule 11 CPC then the court is not helpless and can accordingly invoke the powers under Section 151 CPC and can dismiss the suit under Section 151 CPC. Frivolous litigations are required to be nipped in the bud at the earliest possible stage otherwise no relief to the aggrieved party because of the reason that sole object of the frivolous litigation is to drag adversary in the litigation till it is dismissed consuming several years in trial. If court reaches to the conclusion that suit is frivolous from the totality of the facts brought on record or which have come on record then by not dismissing the suit at earliest, the court virtually declares that a frivolous suit can demand trial of suit and aggrieved party has no remedy against frivolous suit. If there are creases in the law or sometimes is left out or not specifically provided in statute then they are required to be ironed out by the courts by interpreting the law in a manner to advance the cause of justice and no party can be left with no remedy against frivolous suits. At the cost of repetition, it is observed that the continuation of frivolous suit against any person on the ground that it cannot be dismissed since there is no provision under Order 7 Rule 11 CPC is virtually denying an aggrieved party his right to crush the frivolous litigation without suffering the trial of suit.”

19. Similarly, another Division Bench of this court in the case of ***Keshav Chander Thakur & Anr. v. Krishan Chander & Ors., 211 (2014) DLT 149,*** has also approved the above legal position noting that a frivolous suit should be nipped in the bud, i.e., at the initial stage itself. The suit filed by the respondents on a meaningful reading of the plaint is completely frivolous and only an attempt to abuse the process of the court to delay the eviction petition filed by the petitioners. The same is liable to be dismissed on this ground also.

20. The impugned order suffers from material illegality and is liable to be set aside. I, accordingly, allow the application of the petitioners under Order 7 Rule 11 CPC. The suit filed by the respondents for specific performance and injunction is dismissed.

21. The present petition is disposed of as above. All the pending applications, if any, are also disposed of.

JAYANT NATH
(JUDGE)

SEPTEMBER, 18, 2017

v

