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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 29th January, 2018

+ CM (M) 108/2018 and CM APPL.3388-3389/2018

MOHD. MUBARAK & ANR. Petitioners

Through: M. Rais Farooqui, Advocate.

versus

LALIT MOHAN SHARMA & ANR. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners are the defendants in civil suit (CS No.2943/16) instituted by the respondents seeking reliefs in the nature of possession and permanent injunction in respect of shop at ground floor in property No.S-451, School Block, Shakarpur, Delhi-110092 and declaration to the effect that the documents dated 20.12.1989, on which the petitioners (defendants) claim interest in the subject property are null and void, besides damages/*mesne* profits.

2. By the impugned order dated 16.10.2017, the Additional District Judge (ADJ) dismissed their application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) primarily on the ground of limitation, which is assailed by them through the petition at hand.

3. Concededly, the suit in question has already gone to trial on the basis of issues framed, one issue being on the question of limitation as urged by the petitioners. It does appear that the parties were locked in litigation in another suit (CS No.732/2009) which was instituted by the petitioners against the respondents herein. It also does appear that in the said civil suit reliance of the petitioners on the documents dated 20.12.1989 had come up for consideration. It may be added that the documents are in the nature of General Power of Attorney, Will and receipt.

4. The contention of the petitioners is that the respondents (the plaintiffs) having acquired the knowledge about the claim of the interest in the subject property of the petitioners on the basis of such documents through the pleadings in the said previous suit in 2009, the reliefs sought through the suit filed on 12.07.2016 are beyond the period of limitation. Reliance is placed on *Sopan Sukhdeo Sable & Ors. vs. Assistant Charity Commissioner & Ors.*, AIR 2004 SC 1801; *V.K. Sayal vs. Bharat Heavy Electrical Ltd. (BHEL)*, 2008 (102) DRJ 286; and *Nilambar Datt Sharma vs. Central Bank of India & Ors.*, 2013 II AD (Delhi) 374.

5. A perusal of the impugned order shows that the learned trial Judge has declined rejection of the plaint observing that the issue of limitation is a mixed question of law and fact in the present case for the reason that the plaint avers that the knowledge about the documents in question being forged and fabricated came around March, 2016 only.

6. Having heard the learned counsel for the petitioners and having gone through the record, this court finds no merit in the petition. The plaintiff of the case may be aware about the existence of the documents in question since 2009. But then, their contentions that they were not aware of the forgery or fabrication, as they alleged, of the said documents till March, 2016 cannot be disbelieved without opportunity being given to them to prove such facts.

7. In the given facts and circumstances, it is a case where the question of limitation will have to be treated as one of mixed question of fact and law, therefore, the prayer for rejection of the plaint has been rightly declined.

8. The case law referred to above does not help the petitioners.

9. The petition and the applications filed therewith are dismissed *in limine* with costs of Rs.20,000/-, to be deposited with Delhi High Court Legal Services Committee within a week.

R.K.GAUBA, J.

JANUARY 29, 2018

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