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

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+ C.R.P. 92/2018

Date of decision: 11.07.2018

SURJIT SINGH

..... Petitioner

Through Mr. V. Elanchezhiyan, Mr.
Rashid N. Azam, Mr. Manzar
Anis, Advs.

versus

SURAJ BHAN TANWAR

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER (ORAL)

ANU MALHOTRA, J.

CM APPL. 17073/2018 (exemption)

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

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3. Vide the present petition, the petitioner assails the impugned order dated 17.01.2018 of the learned Trial Court in Suit No. 142/16 (New No. 19/17) of the Court of ARC/ACJ/CCJ, Patiala House Courts, New Delhi whereby an application under Order 7 Rule 11 of

the CPC filed by the applicant / petitioner herein arrayed as the defendant to the said Suit was declined.

4. Vide the said application, the applicant had submitted that the cause of action in the suit filed by the plaintiff seeking mandatory injunction, permanent injunction and mesne profits / damages amounting to Rs.2 lakhs for the present and for further mesne profits during the pendency of the suit till the defendant vacated and hands over the vacant and peaceful possession of the suit property was without cause of action and that the plaintiff thereof had not come to the Court with clean hands and that the cause of action is vague and baseless and no documents for showing title had been filed and that the license agreement alleged to exist is void and that the plaint does not disclose a clear right to sue and that the suit is barred by Section 185 of Delhi Land Reform Act, 1954.

5. Reliance is placed on behalf of the petitioner on Order 7 Rule 11 of the CPC and Order 7 Rule 14 of the CPC, 1908 as amended submitting to the effect that the requisite documents in support of the averments made in the suit have not been placed on record and that the plaintiff has not shown any document to prove that he has derivative title from the owner of the subject property, nor how the title devolved on him, nor the source of the title. It is also contended on behalf of the petitioner that the documents that have been sought to be submitted through para 15 of the plaint would not suffice to bring forth the title of the plaintiff of the suit.

6. As regards the contention that was raised before the Trial Court with regard to the aspect of the suit being barred under Section 185 of the Delhi Land Reforms Act, 1954 placed through the suit itself was the Notification dated 03.11.1994 issued in the Delhi Gazette to the effect that the Village Shahbad Mohammad Pur in which the suit property is situated has been declared urbanized.

7. On a consideration of the averments made in the Suit No. 142/16 (New No. 19/17) to the effect that the plaintiff thereof claims his right in the said property without documents sought to be placed in relation thereto, it is essential to observe that through averments made in para 25 of the plaint, the plaintiff i.e. the respondent of the present petition has averred that for the kind perusal of this Hon'ble Court, the plaintiff is filing the following documents along with the plaint : -

1. *Site Plan of the suit property.*
2. *Copy of the legal notice dated 15.02.2016 sent by the plaintiff through his counsel to the defendant, which was duly served upon the defendant.*
3. *Photocopy of the registered Postal receipt dated 18.02.2016, bearing No. A RD 352718682 IN, through which the above said legal notice dated 15.02.2016 was sent.*
4. *Photocopy of the A.D. card signed by the receiver.*
5. *Photocopy of the valuation report qua the suit property showing present rate of rent prevailing in the area i.e. Rs.25,000/- (Rupees Twenty Five Thousand*

Only) P.M. approximately.

6. Photocopy of the L.R. Form 5, Sr. No. 7 and Book No. 800, dated 29.01.1959 (declaration of BHUMIDHAR), along with English translation of the above mentioned L.R. Form No. 5.

7. Photocopy of the certified copy of the above said L.R. Form No. 5, which was obtained by the plaintiff.

8. Photocopy of the Khatoni for the year of 1964-65, obtained by the plaintiff on 02.07.15 alongwith its English translation.

9. Photocopy of the Khatoni for the year of 1969-70, obtained by the plaintiff on 02.07.15 along with its English Translation.

10. Photocopy of the Khatoni for the year of 1973-74, obtained by the plaintiff on 02.07.15 along with its English Translation.

11. Photocopy of the Khatoni for the year of 1977-78, obtained by the plaintiff on 02.07.15 along with its English Translation.

12. Photocopy of the Khatoni for the year of 2002-03, obtained by the plaintiff on 21.05.15 along with its English Translation.

13. Photocopy of the receipt No. 84, Book No. 26, dated 26.02.1961, for an amount of Rs.10.96 (as compensation amount for the former owner of the land and interest thereof) along with its English Translation.

14. Photocopy of the Delhi Gazette dated 03.11.1994 to the effect that the Village Shahbad Mohammad Pur, in which the suit property is situated has been declared urbanized.”,

and the same would be subject to trial.

8. Reliance was placed on behalf of the petitioner on para 17 of the verdict of the Hon'ble Supreme Court in ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706*** to the effect : -

“17. In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order VII Rule 14(2).”

9. In the instant case as already observed hereinabove, there are specific averments in para 25 qua documents of the plaintiff / respondent in the suit.

10. Significantly, the reference to documents in para 25 of the plaint brings the said documents to be incorporated by reference in the plaint, as observed vide para 18 of the verdict in ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (supra)*** to the effect : -

“It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in U.S. Sasidharan vs. K. Karunakaran and Another (1989) 4 SCC 482 and Manohar Joshi vs. Nitin Bhaurao Patil and Another(1996) 1 SCC 169.”

relied upon on behalf of the petitioner.

11. There is nothing more that survives in the petition. The petition is dismissed.

12. Nothing stated hereinabove shall however tantamount to an expression of opinion on the merits of the case pending before the Trial Court.

13. Copy of the order be given *Dasti*, as prayed.

ANU MALHOTRA, J

JULY 11th, 2018/mk