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

***Decided on:- 18<sup>th</sup> May, 2018***

+ CM (M) 593/2016

DR. T.S. ANAND

..... Petitioner

Through: Mr. Aayush Agarwala & Mr.  
Pramod B. Agarwala, Advs.

versus

KARUN ARORA & ORS.

..... Respondents

Through: Mr. Tanmaya Mehta, Adv. for  
R-1.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The petitioner has been impleaded as fourth defendant in the civil suit (presently registered as CS-242/2016) which was instituted in September, 2012 by the first respondent initially on the original side of this Court when it was registered as CS (OS) 2778/2012. The suit is now pending in the Court of Additional District Judge-01, North, Delhi, it having been transferred from the original side of this Court on account of change of pecuniary jurisdiction.

2. By the aforesaid suit, the first respondent (plaintiff) seeks reliefs in the nature of declaration and permanent injunction. It may be noted here that the suit is primarily directed against, and is being contested by, the petitioner (fourth defendant), there being a dispute between the said set of parties with regard to the suit property, it being described as a plot of land admeasuring 1000 square yards i.e. 1 bigha forming part of khasra no. 270, situate in Village Shahbad Daulatpur, Delhi.

3. The petitioner is aggrieved because the trial court, by order dated 19.05.2016, dismissed his application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

4. Having regard to the averments made in the plaint, it may be noted that the case of the plaintiff primarily is that the suit property was originally owned by Mukhtiar Devi wife of Randhir Singh who was the recorded owner as per the revenue records, she having sold the same by registered sale deed dated 19.12.1985 in favour of one Puneet Miglani handing over the actual physical possession to him. The plaintiff states that on the request of the said predecessor-in-interest Puneet Miglani demarcation of the property was done by the revenue authorities as per report dated 20.09.1993 and his name was accordingly entered in the *khatoni* as the owner. It is the plaintiff's case that he had purchased the property, for consideration, by documents in the nature of General Power of Attorney (GPA) and Will dated 18.11.2011, both registered, followed by an Agreement to Sell, GPA, Will, Affidavit and receipt dated 09.12.2011. He claims to have taken over the vacant physical possession of the subject land from erstwhile owner Puneet Miglani at the time of execution of the Agreement to Sell dated 09.12.2011 and, thereafter, to have taken steps to secure his possession and also enjoy the property, *inter alia*, by obtaining and getting installed an electricity connection in his name on 16.03.2012. It is his case that on 15.08.2012 certain persons, at the instance of the fourth defendant (the petitioner), had made an attempt to indulge in illegal trespass into the property which was resisted. He has made averments about report to, and steps taken by, the police,

*inter alia*, by building up a false case against him, with the design to grab the land, attributing certain acts of commission and omission to the other parties impleaded as defendants. Through the plaint he seeks declaration that he is the rightful owner of the subject property “*to the exclusion of the defendants*” and further declaration that the defendants “*have no right, title or interest*” therein. Besides this, he also seeks permanent injunction to restrain the defendants from dispossessing him from the subject property or in any manner disturbing or interfering in his peaceful possession and enjoyment thereof.

5. The petitioner by his written statement seeks to contest the case, *inter alia*, pleading that he is in possession of the suit property on the strength of Sale Deed registered on 17.07.1990, it having been executed by the erstwhile owner Smt. Saroj Kumari in his favour. It is his contention that the documents on the basis of which the plaintiff lays claim are suspect, placing reliance on conclusion of police in an inquiry conducted in September, 2012. It is the case of the petitioner that he has been in possession of the plot of land ever since he purchased it for consideration by the aforementioned sale deed executed by Saroj Kumari.

6. The petitioner argues that the documents in the nature of GPA and Will executed on 18.11.2011 and registered at Noida, *inter alia*, on the basis of which the plaintiff claims right, title and interest in the subject property are suspect. It is his argument that the title in the subject property could not have been transferred through such documents in view of the ruling of the Supreme Court in *Suraj Lamp*

*and Industries Private Limited (2) Through Director vs. State of Haryana & Anr. (2012) 1 SCC 656.* It is further his argument that the exception to the limited extent of the rights conferred by Section 53A of Transfer of Property Act, 1882, as saved in *Suraj Lamp and Industries Private Limited* (supra) is also not available. In this context, reliance is placed on Sections 17 (1) (a) and 28 of Registration Act, 1908 in terms of which the documents in question affecting immovable property were required to be presented for registration in the office of Sub Registrar in Delhi, no stamp duty even having been paid in Delhi with regard to such transaction. The submission of the petitioner is that the plaintiff seeks a judgment of declaration of title *in rem* qua the subject property and, therefore, the plaint insofar as the prayer clause related to declaration is concerned, is bound to be rejected. He places reliance on *Anathula Sudhakar vs. P. Buchi Reddy (dead) by LRs & Ors. (2008) 4 SCC 594* to argue the other prayer for prohibitory injunction being in the nature of consequential relief, would also not survive and the plaint in such regard would have to be resultantly rejected.

7. The Court may assume that the petitioner has substantial and valid questions to raise with regard to the validity, import and effect of the documents on basis of which plaintiff claims to be the owner of the subject property. But, it is pointed out by the counsel for the plaintiff (fourth respondent), as observed by learned single judge of this Court in *Sh. Ashok Indoria vs. Smt. Vidyawanti AIR 2015 Delhi 5*, the judgment of the Supreme Court in *Suraj Lamp and Industries Private Limited* (supra) protects the rights not only under Section 53 A

of Transfer of Property Act, 1882 but also such rights as flow from Section 202 of the Contract Act, 1872 and further the rights which are created by a Will which would operate on the death of the executant. What is crucial here is the fact that the plaintiff claims to be the owner “in possession” of the suit land, his assertion about ownership being based on documents executed by Puneet Miglini who statedly became the owner on the strength of duly registered and executed Sale Deed, such transferor of the title not having questioned the claim of the plaintiff to the ownership. Further, as pointed out by the counsel for the plaintiff, the conflicting claim agitated by the petitioner is based on sale deed executed by a person claiming to be the attorney of Suraj Kumari, she having seemingly raised dispute as to the authority of the person (who executed the said sale deed) to engage in such transaction.

8. The case is not to seek declaration of title by a judgment *in rem*. The claim of the plaintiff to be in possession and he being entitled for protection of such possession in above fact-situation cannot be thrown out without he being given opportunity to prove his case. There cannot be a partial rejection of the plaint.

9. For the foregoing reasons, the petition is dismissed.

10. The contentions of both sides are reserved and may be agitated at the trial.

**R.K.GAUBA, J.**

**MAY 18, 2018**

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