

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

+ **RFA No. 915/2018**

% **2nd November, 2018**

PRAVEEN BANSAL & ORS.

..... Appellants

Through: Mr. Ravi Gupta, Senior Advocate with Mr. Nikhil Singhvi, Advocate, Mr. Sachin Jain, Advocate, Ms. Nikita Pandey, Advocate and Mr. Satvik Kapoor, Advocate (M. No.8826130600).

versus

SHYAM LAL & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.46435-36/2018(exemption)

1. Exemption allowed subject to just exceptions.
C.M.s stand disposed of.

RFA No. 915/2018 and C.M. No. 46434/2018(stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the Judgment of the trial court dated 09.07.2018 by which trial court has rejected the suit plaint under Order VII Rule 11 CPC as being barred by limitation by applying Articles 58 and 66 of the Limitation Act, 1963. Article 58 of the Limitation Act provides for a period of three years for declaration and which really in the facts of the present case would be Article 59 because the appellants/plaintiffs by the suit plaint had sought declaration qua an instrument being the Agreement to Sell dated 20.03.1989. Article 66 of the Limitation Act is a consequence and sequitur to seeking declaration under Article 58/Article 59, whereby possession of the suit property is claimed on the ground that condition of a contract is violated.

3. Learned senior counsel for the appellants/plaintiffs argues that the relief claimed of declaration or cancellation of the Agreement to Sell was a surplusage because there was no need for the appellants/plaintiffs to claim declaration or cancellation of the Agreement to Sell because the Agreement to Sell in question was not

in the nature of Section 53A of the Transfer of Property Act, 1882 as Clause 4 of the Agreement to Sell makes it clear that possession was not delivered to the proposed transferee under the Agreement to Sell dated 20.03.1989. It is therefore argued that the appellants/plaintiffs who are the owners of the suit property remained in possession and are entitled to take back possession of the suit property from the respondents/defendants on account of illegal possession without seeking any declaration of the nature specified under Articles 58/59 of the Limitation Act, and therefore, consequently for Article 66 of the Limitation Act to apply as held by the trial court.

4. As per Order VII Rule 13 CPC, a plaint when is rejected, the same does not prevent the appellants/plaintiffs from filing a fresh suit by averring a correct and complete cause of action. Rejection of plaint under Order VII Rule 11 CPC also will not prevent the appellants/plaintiffs from filing a fresh suit on a separate cause of action. In the present case, the appellants/plaintiffs state before this Court that they will sue on the separate cause of action being the owners and hence being entitled to possession of the suit property on account of illegal and forcible dispossession by the

respondents/defendants in the suit, and in the fresh suit which is proposed to be filed there will be no relief prayed for declaration or cancellation of the Agreement to Sell dated 20.03.1989 on account of facts stated above that really no declaration or cancellation is required of this Agreement to Sell dated 20.03.1989. The aforesaid aspects are argued/stated because in the present suit plaint, there is no cause of action pleaded or facts alleged with respect to when the appellants/plaintiffs who claim to be the owners of the suit land, were illegally and forcibly dispossessed by the respondents/defendants, and it is only from the commencement of illegal dispossession that right of the appellants/plaintiffs will arise, not under Article 66 of the Limitation Act, but either and/or Articles 64 or 65 of the Limitation Act.

5. Accordingly while the impugned judgment dated 09.07.2018 is sustained but since the impugned judgment only rejects the plaint under Order VII Rule 11 CPC, the impugned judgment will not prevent the appellants/plaintiffs from filing a fresh suit on a separate cause of action alleging ownership and illegal dispossession from a particular date, with the fact that in the proposed suit to be filed

it will be stated that suit is filed under Article 64 and/or Article 65 of the Limitation Act and that there is no need of any declaration/cancellation of the Agreement to Sell dated 20.03.1989.

6. Appeal is accordingly disposed of by sustaining the impugned judgment but giving liberty to the appellants/plaintiffs as stated above.

NOVEMBER 02, 2018
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VALMIKI J. MEHTA, J