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

% Judgment delivered on: 05.09.2019
+ C.R.P. 94/2019

JILEY SINGH @ ZILEY SINGH & ORS Petitioners

versus

NEELAM DEVI & ORS Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Yoginder Singh, Advocate.

For the Respondents: Mr. Siddharth Yadav with Mr. N.P. Singh, Advocates for respondent Nos.1 and 2.

Mr. C.S. Rathore, Advocate for respondent Nos.5 to 8.

Mr. Amish Dabar, Advocate for respondent No.9 with SI Pooran Singh.

Mr. Sushil Raaja, Advocate for respondent No.10.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners/defendant Nos. 1 to 4 impugn order dated 18.12.2018, whereby, their application under Order VII rule 11 CPC has been dismissed.

2. Petitioners had filed the subject applications contending that the plaintiffs/respondent Nos.1 and 2 had earlier filed a suit which was dismissed on the ground of limitation and as such, a subsequent suit

was barred on the principle of *res judicata*.

3. Learned counsel for the petitioners further submits that the suit is also barred on account of limitation as also on the ground that the suit has been undervalued.

4. The Trial Court has dismissed the subject applications by the impugned order dated 18.12.2018 holding that earlier was a suit for injunction and the present suit is a suit for possession which is distinct and the plaintiffs were claiming to be the owners of the suit property and the rival claims set up by the defendant Nos.1 to 4 (present petitioners) and the Plaintiffs qua the ownership of the suit property is yet to be decided and as such, the Court was of the view that the subsequent suit was on a different cause of action.

5. The plaint in the earlier suit as also the present suit has been placed on record. In the first suit, which was filed by the plaintiffs, i.e. respondent Nos.1 and 2, they had only claimed the relief of permanent injunction contending therein that they were the owners of the property and the defendant Nos.1 to 4 i.e., the petitioners herein, were interfering in their peaceful possession and preventing them from enjoying the property. Said suit was dismissed on the ground of limitation as the Court was of the view that the plaint was barred by time.

6. In the first plaint, the plaintiffs had stated that they were first

time disturbed on 17.12.2003. The suit was filed in the year 2015 after a passage of 12 years claiming permanent injunction. The Court, in the first Suit, came to the conclusion that the said suit was barred by limitation.

7. The second Suit was filed by the plaintiffs (respondent Nos.1 and 2) contending that their possession was once again disturbed on 29.07.2015, when they were prevented from erecting the boundary wall. The plaintiffs (respondent Nos.1 and 2) further contends that they were dispossessed of the suit property on 29.07.2015. The second subject Suit was filed on 22.04.2017 within a period of three years from the date of dispossession.

8. In the second suit no relief of permanent injunction, which was sought in the first suit, has been sought. The plaintiffs in the second Suit seek a decree of possession as also damages and mandatory injunction against the defendants.

9. The cause of action in the Second Suit is alleged to have arisen on 29.07.2015 when they are alleged to have been illegally dispossessed from the Suit property.

10. In my view, the Trial Court has rightly held that the two suits are completely distinct, on different causes of action and seek distinct reliefs.

11. The fact that the earlier suit seeking permanent injunction has

been dismissed on the ground of limitation would not operate as *res judicata* as the second suit is filed contending that because of non-grant of injunction, plaintiffs have been dispossessed and cause of action has arisen subsequently.

12. The other plea taken by the learned counsel for the petitioners that the suit is barred by limitation also does not have any merit in the facts of the present case. The plaintiffs contended that the cause of action to file the suit arose only on 29.07.2015 when they were dispossessed. Suit is filed on 22.04.2017.

13. The plea of learned counsel for the petitioners that plaintiffs were never in possession is a matter of trial as for Order VII Rule 11 CPC, the Court has to look at the plaint with a demur.

14. Accordingly, the contention of the learned counsel for the petitioners that the suit is barred by limitation as the respondent/complainant were never in possession, is a dispute on which appropriate issue would be required to be framed by the Trial Court and the same would be considered at the final stage being a disputed question of fact and law.

15. Further, it is contended by learned counsel for the petitioners that the plaint was liable to be rejected as the suit is undervalued and the valuation is far below the circle rate.

16. The Trial Court has not returned any finding in the impugned

order with regard to the issue of valuation. It would be open to the Trial Court to consider the issue of valuation at the appropriate stage.

17. Further, it is noticed that plaint cannot be rejected merely because the Suit is undervalued and insufficient court fee is affixed on the plaint. In case Court comes to the conclusion that the Suit is undervalued and insufficiently stamped, one opportunity would be required to be given to the plaintiffs to correct the valuation and make good the deficient court fee, failing which appropriate orders could be passed by the Trial Court.

18. At this stage without first returning a finding as to undervaluation or insufficiency of stamping, the plaint could not have been rejected and rightly has not been so rejected by the Trial Court.

19. I find no infirmity in the impugned order. There is no merit in the petition. The Petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

SEPTEMBER 05, 2019
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