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

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Judgment delivered on: 11.09.2019

+ C.R.P. 126/2018 & CM APPL. 25792/2018

RAJEEV BEHL & ANR

..... Petitioners

versus

S K BEHL

..... Respondent

Advocates who appeared in this case:

For the Petitioners:

Mr. Arjun Mitra and Mr. Sarfaraz Ahmad, Adv.
with Petitioner no. 2 in person.

For the Respondents:

Mr. Bharat Arora, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.03.2018 whereby the application of the petitioner under Order 12 Rule 6 CPC has been dismissed.

2. Learned counsel for the petitioner submits that the application was liable to be allowed, in as much as, the suit filed by the respondent was ex-facie of limitation. It is contended that the respondent has filed the subject suit for possession and mesne profits

on 11.08.2015. It is contended that in a complaint given to the police on 11.08.2010, he had contended that he had requested the petitioner to vacate the premises in the year 2003 and they had refused to do so.

3. Learned counsel for the petitioner submits that the said complaint shows that the petitioner had set up a title adverse to the respondent and as such the plaint was ex-facie barred by limitation and the trial court erred in dismissing the application under Order 12 Rule 6 CPC.

4. The petitioners are son and daughter-in-law of the respondent. Respondent had filed the subject Suit for possession and recovery of mesne profits and damages contending that he had permitted the petitioner no. 1 to live in a portion of the property being his son and after his marriage to petitioner no. 2 he had started harassing the respondent.

5. The contentions of the learned counsel for the petitioner is that earlier also a suit was filed by the respondent on 19.12.2014 which was dismissed as withdrawn on 22.07.2015 with liberty to institute a fresh suit on the same cause of action and subject matter before the Court of pecuniary and territorial jurisdiction.

6. Learned counsel for the respondent points out that earlier the suit was withdrawn on 22.07.2015 after taking liberty and the present Suit was filed immediately thereafter on 11.08.2015.

7. Respondent claims to be owner of the subject property by virtue of a registered conveyance deed in his favour.

8. It is an admitted position that in collateral proceedings instituted by the respondent under Maintenance of Senior Citizen and Parents Act, 2007, the possession of the subject premises has already been recovered by the respondent.

9. Petitioner had impugned the order whereby the respondent was directed to hand over the possession, however, unsuccessful and subsequently the possession now stands delivered to the respondent.

10. Perusal of the record shows that the first suit filed by the respondent was a simplicitor suit for ejectment and the subject suit is for possession and recovery of *mesne* profits and damages.

11. Admittedly, possession of the subject property now stands delivered to the respondent.

12. The case set up by the respondent is that the petitioner had been torturing, humiliating and creating lots of nuisance for the respondent and his wife and the petitioner is also having his office in the subject property and was availing all the facilities as free of costs without paying any amount to them. As per the plaint, respondent had permitted the petitioner to reside in the same being the son and daughter in law of the respondent.

13. *Mesne* profits and damages have been claimed for the period

that the petitioners were in occupation of the subject property. In my view, there is no infirmity in the order of the trial court in dismissing the application under Order 12 Rule 6 CPC of the petitioner; firstly because the respondent has already taken possession of the subject property; and secondly because the right to claim *mesne* profits is a recurring cause of action and Suit would lie so long as the Petitioners continued to occupy the said property.

14. Respondent in the subject plaint has contended that in the year 2014 he had asked the petitioner to vacate the property and they failed to vacate the same thereby right to sue accrued.

15. From the perusal of the plaint as also other documents, there is no admission made by the respondent admitting to the title of the petitioner to the subject property.

16. Petitioner has further not been able to point out as to when for the first time petitioner had claimed title adverse to the respondent or disputed the title of the respondent.

17. It is observed in the written statement, which is filed on 07.09.2016, for the first time a plea of adverse possession has been taken.

18. Learned counsel for the petitioner very candidly admits that apart from the written statement there is no other document to show that petitioner had ever claimed title to the property or disputed the

title of the respondent or set up an adverse title in himself.

19. The trial court has also noticed that the petitioner had failed to show any admission in the entire plaint which would entitle the petitioner to a decree under Order 12 Rule 6 CPC. Even before this Court, the petitioner has failed to show any document or admission on the part of the respondent which would constitute an admission entitling the petitioner to an order under Order 12 Rule 6 CPC.

20. I find no infirmity in the impugned order and also find no merits in the petition.

21. The petition is accordingly dismissed with costs of ₹ 15,000/-.

SEPTEMBER 11, 2019
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SANJEEV SACHDEVA, J