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

\+ **RFA No. 842/2016**

% ***22nd January, 2019***

SURESH CHANDER ..... Appellant

Through: Mr. Ashok Gupta and Ms. Laxmi Gupta, Advocates (Mobile No. 9810309723).

versus

DURGA DUTTA & ORS ..... Respondents

Through: Mr. R.K. Somkiya, Advocate for R-1 and 6 (Mobile No. 9810124896).
Mr. Rahul Gupta, Advocate for R-2 (Mobile No. 9145487483).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 09.09.2016 by which the trial court has rejected the suit plaint as barred by limitation and the trial court has also held that the appellant/plaintiff has no *locus standi* to file the suit.

2. The facts of the case are that the appellant/plaintiff is a handicapped person, but is appointed as a Head Constable with the Delhi Police. The plaint filed by the appellant/plaintiff seeks the reliefs of permanent injunction and declaration stating that he was allotted plot no. 79, Pocket-3, Sector 25, Rohini, Delhi by the Delhi Development Authority (*hereinafter* 'DDA') in terms of the Letter dated 27.03.1991. It was pleaded by the appellant/plaintiff that since he was a handicapped person, he could not pursue the matter with the DDA and therefore he appointed one, Sh. Radhey Shyam, son of Sh. Mange Ram on 10.10.1992 as his power of attorney holder and the appellant/plaintiff also gave some blank papers to the said Sh. Radhey Shyam. It is pleaded that Sh. Radhey Shyam failed to pursue the matter and therefore the appellant/plaintiff cancelled the General Power of Attorney issued in favour of Sh. Radhey Shyam on 27.11.1996. The appellant/plaintiff further pleads in the plaint that he came to know from one Mr. Kaptan Singh that Sh. Radhey Shyam had expired in a road accident. It was further pleaded that the DDA had executed a Perpetual Lease Deed on 17.10.1996 in favour of the appellant/plaintiff. It is also pleaded that the appellant/plaintiff got possession of the suit property vide Letter dated 06.08.1998. It is

then pleaded in the plaint that from August, 2010 he was harassed by *gunda* elements and property dealers in the area with respect to the suit property and it was stated that the respondent no. 1/defendant no. 1 along with one Sh. Devinder Mann/respondent no. 6/defendant no. 6 claimed to have purchased the suit property. These respondent nos. 1 and 6/defendant nos. 1 and 6 are said to have created a scene at the house of the appellant/plaintiff. The appellant/plaintiff pleads that on 11.09.2010 he was forcibly taken to the office of one Sh. Sunil Gupta property dealer and subjected to threats and was forced to sign certain papers failing which he and his family would be eliminated. It was pleaded that the appellant/plaintiff being so threatened was forced to sign the General Power of Attorney, Possession letter and other related documents of the suit property. It was pleaded that the appellant/ plaintiff thereafter discussed the matter with his senior officers and contacted the SHO of Police Station Shahbad Dairy and a Complaint was given vide DD No. 26B dated 18.09.2010 but no action was taken. Reminder was also said to be given to the SHO on 06.10.2010 vide Diary LC No. 967 dated 06.10.2010. The appellant/plaintiff being aggrieved by the non-registration of the FIR filed a complaint case under Section 200 read with Section 156(3) of the Code of

Criminal Procedure, 1973 before the concerned Metropolitan Magistrate (M.M.) and in this case a report was filed on by the Investigating Officer on 04.02.2011. The appellant/plaintiff pleads that he has paid property tax for the month of March, 2012. It is also further pleaded in the plaint that only on getting the final report on 03.07.2013 in the criminal court that he approached DDA to know the status as to why the perpetual lease of the appellant/plaintiff was cancelled and a fresh perpetual lease was executed in favour of the respondent no.1/defendant no.1 as the DDA had executed a perpetual lease in favour of the respondent no.1/defendant no.1. Accordingly, pleading that the appellant/plaintiff continues to be the owner of the suit property and had never sold the suit property to the respondent nos. 1 and 6/defendant nos. 1 and 6, the subject suit for declaration and injunction was filed.

3. The trial court has decided the issue of limitation as a preliminary issue, and rightly so, because only the admitted facts stated in the plaint have been looked at. Once only the admitted facts stated in the plaint have been looked at, in fact, the suit could have been rightly dismissed by a preliminary issue because there were no disputed question of fact which required trial. Admissions of plaint

are admissions of the plaintiff, and therefore, the argument of the counsel for the appellant/plaintiff before this Court that there is a mixed question of law and fact is a misconceived argument, and is therefore rejected.

4(i). The period of limitation for cancelling of a document is provided in Article 59 of the Limitation Act, 1963. This article provides that there is a period of three years of limitation to set aside an instrument and the limitation commences from the date when the facts so as to cancel the instrument become known to the plaintiff. In the present case, as per the plaint itself, the appellant/plaintiff pleads that on 11.09.2010 he forcibly signed documents and thereafter filed a complaint with the concerned police station on 18.09.2010. Paras 8 and 9 of the plaint specifically plead the factum that documents with respect to the suit property were forcibly got signed from the appellant/plaintiff. However, the subject suit for declaration with respect to the invalidity of the documents alleged to have been executed by the appellant/plaintiff has been filed on 07.01.2016. The period of limitation of three years began from 11.09.2010 and in any case from filing of the complaint by the appellant/plaintiff with the police on 18.09.2010, and therefore, the present suit plaint filed on 07.01.2016 as per Article 59 of the Limitation Act was clearly time barred, and this is so rightly held by the trial court.

4(ii). Also, in my opinion, the trial court has rightly held that as per the plaint, the appellant/plaintiff admits that the perpetual lease in his favour was cancelled and another perpetual lease had been executed by the DDA in favour of the respondent no.1/defendant no.1/Sh. Durga Dutta, and this fact was also known to the appellant/plaintiff when the report was filed in the criminal case on 10.02.2011. Also, if this document had to be got cancelled by the appellant/plaintiff, such a suit as per Article 59 of the Limitation Act had to be filed by 10.02.2014, but it is noted that the subject suit has been filed on 07.01.2016 only, and therefore besides the fact that the challenge to the perpetual lease executed in favour of the respondent no.1/defendant no.1 became time barred, consequently, the appellant/plaintiff had no *locus standi* with respect to the suit property because the title of the suit property stood transferred in favour of the respondent no.1/defendant no.1 to the knowledge of the appellant/plaintiff by 10.02.2011.

5. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed.

JANUARY 22, 2019 **VALMIKI J. MEHTA, J**

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