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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on 02nd March 2020

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RFA 522/2019, CM APPL.No.25629/2019

VINOD KUMAR KAUSHIK

..... Appellant

Through : Mr.A. K. Padhy, Mr. S. R. Padhy,
Advocates.

versus

MADAN LAL ARORA (DECEASED)

THR LRS

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Regular First Appeal is preferred by the appellant against the judgment dated 30.01.2019 passed by the learned Additional District Judge-2, North-West District, Rohini Hazari Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in Civil Suit No.75453/2016 whereby the plaint in suit filed by appellant for declaration, possession, permanent injunction, occupation charges and damages was rejected on an application filed by the respondent under Order VII Rule 11 CPC.

2. The appellant claims himself to be an owner of the property bearing No.WZ-472/343, Sri Nagar, Shakur Basti, Delhi (hereinafter referred as the '*suit property*') and that he stood a guarantor for M/s.Shiva Automobiles on 11.01.2002 with the Bank of Baroda. An equitable mortgage of the suit property was created and necessary

documents were deposited with the bank. The overdraft facility was provided to the principal debtor. The said loan account was declared as a NPA after default and bank started proceedings under the SARFAESI Act. The relevant notice was affixed at the property and also published in the newspaper on 24.07.2005 warning against dealing with the suit property.

3. The Court Receiver was appointed on 12.02.2007 and symbolic possession of the suit property was taken by him. Since the matter was pending before the Debt Recovery Tribunal (DRT) vide SA No.52/2007 under the SARFAESI Act the respondent filed an Interim Application No.245/2007 propounding his ownership on the basis of the various documents while alleging the appellant along with his mother had executed the documents of sale in favour of a third party and then he had purchased the suit property vide sale deeds dated 23.01.2005. The entire chain of ownership was filed before the DRT. The appellant herein filed the reply to said application on 09.08.2007 denying the ownership of the respondent as well as *authenticity of his title documents* terming them as forged and fabricated. The matter was, however, settled between the bank and the respondent. The respondent paid the dues of the mortgage as per order dated 16.08.2007 of the DRT and the mortgage ended.

4. The learned counsel for the appellant submits after securing the documents of suit property, the appellant left for South Africa on 21.10.2007 and when he returned in November, 2007 he found that respondent is in possession of the suit property. It was alleged all the title

deeds of appellant were stolen by the respondent and he even went to the police to make complaint and FIR No.82/2008 was registered at police station Sarswati Vihar, Delhi, but of no avail.

5. The respondent appeared before the learned Trial Court and filed an application under Order VII Rule 11 CPC; allowed on ground of limitation by learned Trial Court vide the impugned order.

6. The learned Trial Court based its reasoning per Article 59 of the Schedule to the Limitation Act, 1963 which provides the period of three years for seeking declaration qua impugned documents to be declared as null and void.

7. Admittedly, the appellant filed a reply on 09-08-2007 before DRT to the IA No.245/2007 filed by respondent wherein he had disputed the ownership of the respondent based upon the title documents allegedly executed in favour of the respondent. The learned Trial Court has dealt with this issue in the following paragraphs of the impugned order:-

"7) In para No.13 of the plaint, the plaintiff is talking about his reply filed in the DRT to the defendant's IA No. 245/07. The IA No. 245/07 was a compendium of the defendant's claim of ownership. Annexed with it was his entire chain including the impugned sale deeds and also the previous title deeds executed by the plaintiff & his mother in favour of a previous buyer. The plaintiff in his reply denied not only the contents of the application but also the entire chain by alleging fraud. Such a complete and specific denial was not possible without plaintiff having exhaustive knowledge of the contents of the title deeds. So he must have had got hold of the impugned title deeds during the DRT proceedings after they were filed by the defendant. What is important was the plaintiff acquiring knowledge about the existence of the impugned title deeds. That is when his Limitation started to run. The counsel for the plaintiff argues that the plaintiff's reply was without acquiring the said documents or without going through their contents. It was simply filed on the basis of the contents of the application. I do not believe this argument. My aforesaid conclusions already answered it that he acquired knowledge during DRT proceedings.

8) The date of plaintiff's reply is important. It is 09.08.2007. The annexing affidavit is dated 10.08.2007. In the best case scenario, I will give the plaintiff a benefit by assuming that the date of the reply is 10.08.2007 when the affidavit was attested. Immediately thereafter, the time started to run as per Article 59. It was 3 years from there. The present suit was filed on 27.11.2010. So quite clearly the Declaratory relief is time barred. Once it goes, everything else also falls apart. In absence of declaration, the plaintiff will not be able to dislodge the defendant's title duly acquired through registered sale deeds. The defendant will always have a better title which will bar the plaintiff's re-entry. So now he can not even seek possession or any other relief. His entire venture has collapsed."

8. During the course of arguments, appellant had submitted he had challenged the sale deeds before the SDM by filing an application on 06.02.2010 for cancelling such sale deeds and pursued such application till 12.08.2010 and hence the said period be exempted under Section 14 of the Limitation Act, 1963 from limitation of three years for filing the suit. I disagree with this contention. Section 14 of the Limitation Act, 1963 read as under :-

"14. Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

9. Admittedly, the Sub Registrar is neither the Court of first instance nor of appeal or revision, hence no benefit per Section 14 of the Limitation Act, 1963 can be availed by the appellant herein.

10. Secondly, the appellant intend to avail benefit under Section 5 of the Limitation Act, 1963, which *per se* would also be not available to him

as is applicable on application(s) etc. and not to suits. No other contention is raised by the appellant before this Court.

11. The impugned order passed by learned Trial Court is reasoned one and needs no interference by this Court. The appeal has no merit and is dismissed.

12. The pending application, if any, also stands disposed of. LCR be also remitted forthwith. No order as to costs.

MARCH 02, 2020

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YOGESH KHANNA, J.



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