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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 409/2017 & CM APPL. 14065/2017

ROHTASH

..... Petitioner

Through: Mr. Lohit Ganguly, Advocate (M-9868255810)

versus

KHADAK SINGH (THR LRS) & ORS

..... Respondents

Through: Mr. J.K. Jain, Advocate (M-9811073458)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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03.02.2020

1. The present petition has been filed challenging the impugned order dated 13th January, 2017. By the said order, the Petitioner's/ Plaintiff No. 1's (*hereinafter, "Plaintiff No. 1"*) application under Order XII Rule 6 CPC was dismissed by the Trial Court and the matter has proceeded to trial.
2. The suit is one for declaration and permanent and mandatory injunction. The case of the Plaintiffs is that the property in question being plots no.46 and 47 measuring 250 sq. yds., Village Sungarpur, P.S. Alipur, Delhi -36 each were allotted to the Plaintiffs' predecessors-, and that they are the owners of the said property. It is the case of the Plaintiffs that there was a negotiation which had taken place between the Plaintiffs and the Defendants for sale but the possession of the properties was never parted with to the Defendants. It is submitted that since the ownership of the Plaintiffs is admitted by the Defendants, a decree of declaration is liable to

be passed under Order XII Rule 6 CPC. The said application was rejected by the trial court.

3. On the other hand, the Defendants rely upon a Power of Attorney, receipt and certain other documents to claim that they have purchased the property from the predecessors of the Plaintiffs.

4. The following issues have been framed in the suit vide order dated 9th July, 2018:

- “1. Whether the suit is barred u/o 2 Rule 2 CPC? OPD*
- 2. Whether the suit is hit by Section 53 A TPA? OPD*
- 3. Whether the suit is barred by Limitation? OPD*
- 4. Whether plaintiff is entitled to the decree of Declaration, as prayed for? OPP*
- 5. Whether plaintiff is entitled to the decree of possession, as prayed for? OPP*
- 6. Whether plaintiff is entitled to the decree of permanent injunction, as prayed for in relief No.(iii)? OPP*
- 7. Whether plaintiff is entitled to the decree of permanent injunction, as prayed for in relief No.(v)? OPP*
- 8. Whether plaintiff is entitled to the decree of Mesne profits? If so, at what rate and for what period? OPP*
- 9. Relief.”*

5. The contention of ld. counsel for the Plaintiffs is that since the Defendants admit the title of the Plaintiffs, a decree is liable to be passed in their favour. On the other hand, the contention of ld. counsel for the Defendants is that an earlier suit had been filed by the Plaintiffs. Thus, the present suit is barred under Order II Rule 2 CPC, since the present suit was filed during the pendency of the first suit. It is further argued that the Defendants also claim adverse possession and defences under Section 53A

of the Transfer of Property Act, 1882. Ld. counsel for the Plaintiffs again urges that in the first suit, liberty was granted to the Plaintiffs to pursue the second suit vide order dated 11th July, 2016.

6. The Court has heard the parties in this matter. The issues which have been framed show that the question of the suit being barred under Order II Rule 2 CPC, limitation, etc. have all to be decided by the Trial Court. Insofar as the title of the Plaintiffs through their predecessors is concerned, the same is not disputed. However, the Defendants wish to prove the documents which they rely upon to argue that they have purchased the properties from the Plaintiffs. The original documents apparently have been lost by the Defendants. The true purport and effect of these documents, which shall be proved by the Defendants shall be considered by the Trial Court. The submission of Ld. counsel for the Plaintiff No. 1 is that even if these documents are proved, they do not vest any title in view of the fact that they are unregistered documents. The said issue would also have to be considered by the Trial Court inasmuch as the property being located in a semi-urbanised/non-notified area, it cannot be said that the Defendants do not deserve to be given an opportunity to establish their defence. This would not be a case for passing a decree of declaration under Order XII Rule 6 CPC. Considering the overall conspectus of the case, the following directions are issued:

- i) The Plaintiffs' title to the suit property no longer requires to be proved as the same is admitted by the Defendants;
- ii) The Defendants are given an opportunity to prove the documents either through primary or secondary evidence, and if the documents are proved in accordance with law, the same would be

considered to determine if any title vests in the Defendants;

iii) Oral evidence will be led of two of the Defendants' witnesses, apart from official witnesses. The Defendants shall endeavour to produce originals from the governmental authorities such as the electricity department, etc. or certified copies obtained from the said authorities instead of summoning records, in order to ensure that the trial is not protracted;

iv) The question as to whether the Defendants can take the defences of Section 53A and adverse possession in the same breath shall be decided by the Trial Court at the time of final adjudication.

7. The trial of the suit shall be concluded within a period of six months from today, and the suit is directed to be adjudicated within a period of one year.

8. With these observations, the petition and all pending applications are disposed of. A copy of this order be sent to the ADJ – II, Rohini Courts, Delhi hearing *Rohtash & Ors. v Khadak Singh & Ors.*, CS DJ No. 77897/16.

PRATHIBA M. SINGH, J

FEBRUARY 03, 2020

Rahul