



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

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Judgment reserved on: 04.03.2024

Judgment pronounced on: 08.05.2024

+ CM(M) 77/2023, CM APPL. 2562/2023—stay

SHRI SALEKH CHAND YADAV

..... Petitioner

Through: Mr. Vikesh Rathi, Adv.

versus

SHRI AMIT SETHI

..... Respondent

Through: Mr. Shiv Charan Garg and Mr. Imran Khan, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. This petition under Article 227 of the Constitution of India emanates from CS No.8847 of 2016 whereby the learned Additional District Judge-06, Tis Hazari Courts, West, Delhi dismissed the application filed by the petitioner/plaintiff under Order XVI Rule 2 & 3 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC"). The respondent herein is the defendant before the learned Trial Court.

2. Given the controversy at hand, it is necessary to state, in brief, the claim in the suit instituted by the petitioner/plaintiff. The petitioner had filed a suit for possession under Section 6 of the Specific Relief Act, 1963 (hereinafter "the Act") and for permanent injunction against the respondent, averring that one Smt. Nirmal Rekhi is the owner of the property bearing No.C-51, Paschim Vihar, New Delhi (hereinafter "Suit Property"). It is stated by the petitioner that Smt. Nirmal Rekhi used to visit the office of the



petitioner at WZ-180, Old Sahibpura, Tilak Nagar, New Delhi for legal consultation and legal work. In the month of March, 2002, she visited the office of the petitioner and ask him to take care of suit property as she was travelling to the USA and would stay there for considerable amount of time.

3. The petitioner thereafter had been taking care of the suit property and using it for the purpose of parking his car as well. In 2014, the respondent along with his associates came to the suit property and threatened to disposes the petitioner from the property. It is the case of the petitioner that the respondent and his associates in connivance with the police officials forcibly detained the petitioner and fabricated documents for the suit property, with the intention to sell the property.

4. The respondent and his associates then destroyed certain structures constructed within the suit property and went on to construct a boundary wall. The petitioner was approached by the respondent on the suit property on 11.01.2015, where he threatened to sell the suit property to a third party. This action served as the final nail in the coffin and aggrieved by these aforementioned actions of the respondents and his associates, the petitioner filed the present civil suit on 30.01.2015 against the respondents.

5. On competition of pleadings by the parties, the learned Trial Court framed six issues on 18.07.2017. The matter was listed for plaintiff evidence and on 25.10.2018, the examination in chief of the plaintiff was recorded. During the pendency of the trial, the petitioner sought to examine the DDA witness who produced original documents of the suit property. Thereupon, the petitioner came to know that the registered General Power of Attorney dated 16.03.2000, will dated 16.03.2000, as well as an agreement to sell



purported to be executed by Smt. Nirmal Rekhi that the said documents were forged documents.

6. Hence, the petitioner moved an application under Order XVI Rule 1(2) & (3) seeking permission to produce additional official witnesses i.e. Shri. Rakesh Sharma, SDM, Karawal Nagar, Delhi and Clerk from the office of F.R.R.O., East Block VIII, Level V, Sector-1, R.K. Puram, New Delhi along with record of passport no. 087004964 of Smt. Nirmal Rekhi. Vide the impugned order, the learned Trial Court declined to allow the application and the same was dismissed as not maintainable.

7. Mr. Vikesh Rathi, learned counsel for the petitioner submitted that the learned Trial Court has erred in dismissing the application filed by the petitioner on flimsy reasons. The Learned Counsel further submits that it is essential that the said witness be examined to assess the veracity of the documents produced by the aforesaid witness which were not earlier produced on the record.

8. Mr. Shiv Charan Garg, learned counsel for the respondent refuted the submissions made on behalf of the petitioner and stated that the impugned order is to be upheld as the learned Trial Court has rightfully dismissed the application. It is submitted that veracity of documents is not a subject matter to the civil suit and separate proceedings will have to be initiated for that.

9. It would also be apposite to refer to Section 6 of Specific Relief Act which is as under:

“6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover



possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

10. As per the petitioner, Smt. Nirmal Rekhi is the owner of the suit property and she had appointed him as the caretaker in her absence, to take care of the property while she was away. Therefore, it is beyond the purview of the present suit to prove that the alleged documents i.e. Agreement to sell, GPA and registered will are forged and fabricated documents or to produce the documents with respect to the passport of Smt. Nirmal Rekhi, specifically in the absence of the passport holder herself.

11. Hence, the learned Trial Court has rightly observed that said documents are not relevant to the adjudication of the present petition.

12. There is no infirmity with the impugned order consequently, the petition stands dismissed.

SHALINDER KAUR, J.

MAY 08, 2024

SDS