



\$~42

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

+ **C.R.P. 96/2024**

PRITPAL SINGH

..... Petitioner

Through: Mr. Girish Kumar and Mr. R.K.
Dev, Advs.

versus

AMANDEEP SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

12.03.2024

%

CM APPL. 14833/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 96/2024

3. The petitioner herein, who is the defendant in the suit instituted by the respondent/plaintiff, is assailing the impugned order dated 02.01.2024 passed by the learned ADJ-07, West District, Delhi, whereby his application under Order VII Rule 11 CPC has been dismissed.

4. None is present for the respondent despite advance notice.

5. Having heard the learned counsel for the petitioner and on perusal of the record, this court finds that the present revision petition under Section 115 of the CPC is bereft of any merits.

6. Shorn of unnecessary details, the plaintiff claims that his mother Smt. Balwinder Kaur, who died on 26.07.2003, was the only daughter



of Smt. Kamlesh Kaur, who died on 09.08.2003. Smt. Kamlesh Kaur is the maternal grandmother of the plaintiff. It is stated that his maternal grandmother has been residing along with his mother and the property in question viz. Shop No.3 in Property bearing No. F-118, Rajouri Garden measuring about 110 sq. ft. and stair-case measuring 34.30 sq. ft. belonged to his maternal grandmother, which was purchased by virtue of a Sale Deed dated 30.05.200; and the said property had been given on licence to the petitioner/defendant without any consideration, as he is the son of her brother-in-law (*devar*). It is the case of the respondent/plaintiff that only in August, 2019 he came to know that the petitioner/defendant is claiming himself to be the owner of the said shop, by virtue of a Will dated 04.08.2003, allegedly executed by his maternal grandmother, claiming that his maternal grandmother died intestate and for the fact that on being asked, the petitioner/defendant failed to vacate the premises and he instituted the suit seeking possession of the suit property apart from other claims.

7. The petitioner/defendant moved an application under Order VII Rule 11 CPC for rejection of the application, which came to be dismissed by the learned Trial Court assigning the following reasons:

“5. Vide a separate Order of even date, the application of the plaintiff seeking amendment in his plaint has been allowed. Vide the present suit, the plaintiff has sought declaration that the registered Will dated 04.08.2003 is null and void. He has also sought an alternative prayer that if the said Will is held to be valid, plaintiff be declared owner to the extent of 1/3rd share of the suit shop. He has also sought possession of the suit property and damages/ mesne profit.

6. Whether or not the Will and GPA dated 04.08.2003 relied upon by the defendant are fraudulent documents is subject matter of trial. Contention of the defendant is that the GPA executed by Smt. Kamlesh Kaur bears the signatures of Sh. Darshan Singh who is the father of the plaintiff. Whether or not it leads to the conclusion that the plaintiff was aware of execution of the Will also is a



subject matter of trial. The perusal of the GPA would show that it does not grant any ownership title in favour of the defendant. The registered Will, however, does not bear the signatures of Sh. Darshan Singh as a witness. For the purpose of application u/O 7 r 11 CPC, only plaint is required to be seen. The case of the plaintiff is that he came to know of the fraud played upon by the defendant in respect of the suit shop only in August 2019. The present suit was filed on 07.01.2020.

7. As per section 17(1)(a) of the Limitation Act, 1963 where, in the case of any suit or application for which a period of limitation is prescribed by this Act, - (a) the suit or application is based upon the fraud of the defendant or respondent or his agent, the period of limitation shall not begun to run until the plaintiff or applicant has discovered the fraud or could, with reasonable diligence, have discovered it. Thus, on the basis of the averments in the plaint, the present suit cannot be said to be barred by limitation. The question whether the plaintiff could have discovered the fraud with due diligence is also a matter of trial.

8. Further, the defendant has not mentioned as to by how much amount is the Court fee filed by the plaintiff in the present case deficient. Since the Will and GPA dated 04.08.2003 has been called into question by the plaintiff in the present case, it cannot be said on the basis of these very documents that the present suit is devoid of any cause of action or that the plaintiff has no locus standi to file the present suit.

9. The defendant has also relied upon **ITC Ltd Vs. Debts Recovery Appellate Tribunal & Ors. (1998) 2 SCC 70** and **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) thr LRC 2020 LRC Online 243 (SC)** in support of his contention that the plaintiff cannot be permitted to protract a civil suit where the litigation is a sham one and does not disclose cause of action and is also barred by limitation. As discussed above, the present suit discloses cause of action and is within the period of limitation. The contentions of the defendant in this regard are subject matter of trial. The case laws relied upon by the defendant do not help him at this stage.

10. In view of above discussion, the Court does not find any ground to reject the plaint in the present case. The application u/O 7 r 11 CPC of the defendant is, therefore, dismissed.”

8. On a careful perusal of the aforesaid reasoning, this Court finds that the learned Trial Court has neither committed any illegality or



perversity nor has it adopted an incorrect approach in dismissing the application under Order VII Rule 11 CPC.

9. The issues raised by the petitioner/defendant in the present petition are as such the matters of trial and can only be deciphered and appreciated after the recording of evidence of the parties. Evidently, the application discloses a cause of action and the same appears to have been filed within the period of limitation.

10. At the cost of repetition, whether or not any fraud has been played and whether there was lack of due diligence on the part of the plaintiff, are issues that can only be decided after recording of evidence of the parties.

11. In view of foregoing discussion, the present civil revision petition is dismissed.

12. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J.

MARCH 12, 2024/ck