



2024:DHC:6073



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

% **Date of order: 19th July, 2024**

+ **C.R.P. 75/2022, CM APPL. 24355/2022 & CM APPL.46057/2022**

SUSHIL KUMAR PATNEYPetitioner

Through: **Mr. Amit K. Singh and Mr. Rohit
Rexwal, Advocates**

versus

SHAKUNTALA DEVI & ORS.Respondents

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been filed on behalf of petitioner seeking the following reliefs:-

"a) Call for the record of suit bearing No. CS/DJ/1161q/2016 titled as Shakuntala Devi Vs Bimla Devi Sehgal & Ors.; pending in the court of Sh. Pawan Singh Rajawat, LD. ADJ-03,/ Tis Hazari Court;

b) Set aside order dated 13.12.2021 passed in Civil Suit bearing No. CS/DJ: 11610/20 16 titled as Shakuntala Devi Vs Bimla Devi Sehgal & Ors. passed by Sh. Pawan Singh Rajawat, LD. ADJ- 03, / Tis Hazari Court;

c) Allow the Application under Order VII Rule 7, CPC of the Petitioner & Respondent no.2 herein (Defendant No.1 & 2).

d) Pass any other or further orders which this Hon'ble court may deem fit and proper in the interest of justice."

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2. Learned counsel appearing on behalf of petitioner submitted that while passing the impugned order, the learned Trial Court has failed to appreciate the arguments and contentions made in the application filed under Order VII Rule 11 of the CPC.

3. It is submitted that the learned Trial Court has not taken into consideration the factum that without making any agreement of the title, a prayer was made for declaration, possession and mandatory injunction and such relief is contrary to the law established by the Hon'ble Supreme Court as well as by different High Courts.

4. It is further submitted that the plaintiff (respondent No.1 herein) has made false averments in the plaint to mislead the learned Trial Court and those false averments were pointed out at the stage of deciding the application filed under Order VII Rule 11 of the CPC. However, the same was not taken into consideration while deciding the application. In support of his arguments, learned counsel appearing on behalf of petitioner has placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and Ors.*, **AIR 2008 SC 2033**.

5. In view of the aforesaid submissions as well as the settled position of law, it is submitted that the impugned order is contrary to the law and statutory provisions and therefore, it is prayed the same may be set aside.

6. Heard learned counsel appearing on behalf of petitioner and perused the record including the impugned order, contents made in the application



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filed under Order VII Rule 11 of the CPC as well as the plaint filed by respondent No.1 herein.

7. At this juncture, this Court deems it apposite to peruse the relevant paragraphs of the impugned order which are reproduced herein below:-

“...8. In the present suit, the plaintiff is seeking relief of possession, declaration and injunction in respect of the suit property. The stress of the argument of Ld. Counsel for defendants is that the plaintiff has not sought relief of declaration of her title but has only sought possession and therefore, the plaint should be rejected. The plaintiff in the first paragraph itself claims herself as owner and it is not the case that she is claiming possession in any other capacity. Merely, no seeking declaration of title does not extinguish the other reliefs sought by the plaintiff and therefore this argument of defendants stands rejected.

9. The defendants also seeking rejection of the plaint on the ground that same is time barred. The plaintiff claimed that she firstly came to know about the proceedings before DRT in the year 2003 and contested the said proceedings which continued till the year 2014 and had filed a suit against defendants no.1, 2 and 4 which was rejected on 15.03.2016. The present suit is filed on 10.05.2016 and therefore at this stage, it cannot be established that the suit is time barred and evidence is required from both the sides to prove or dispute the same...”

8. Upon perusal, it is made out that the learned Trial Court noted that the respondent No.1 filed the suit seeking possession, declaration and injunction of the suit property and the contention of the learned counsel for the petitioner is that the defendant has not sought declaration of title and merely sought possession of the property, hence, the plaint is liable to be rejected. In



this regard, the learned Trial Court observed that the respondent No.1 is claiming to be the owner of the property, therefore, she has sought a relief for possession of the property.

9. It was further observed that the respondent No.1 had earlier filed suit against the petitioners which was rejected on the ground that she did not seek any relief regarding possession of the property.

10. The second contention of the learned counsel for the petitioner before the learned Trial Court was that the plaint is time- barred. In this regard, the learned Trial Court observed that the respondent no.1 came to know of the proceedings before Debt Recovery Tribunal in 2003, which continued till the year 2014. Pursuant to which, a suit filed by the petitioner was rejected. Accordingly, the learned Trial Court observed that the suit is not time barred.

11. Now this Court will advert to the relevant paragraphs i.e. paragraphs No. 1, 6, 7, 9, 11, 16 and 19 of the plaint for proper adjudication of the instant petition. The aforesaid paragraphs have been reproduced herein below:

“1. That the plaintiff is owner of property No. A-1 04, measuring 266 sq. yds., out of Khasra No.1447, in area of village Basai Dara Pur, colony known as Sharda Puri New Delhi and the plaintiff executed attorney in favour of her son Sh. Vinod Chawla to do all the acts and filed the present suit on her behalf.

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6. That in the year 2003 the plaintiff came to know about the proceedings of Debt Recovery Tribunal and the defendant no.3 had filed the proceedings against the plaintiff and her son



directly and taken the order behind the back of the plaintiff and her son and the plaintiff and her son contested the said proceedings.

7. That latter on in the year 2005 the defendant no.1 & 2 filed the objections before the Debt Recovery Tribunal then the plaintiff astonished when the plaintiff came to know that the defendant no.1 & 2 with calimance of the defendant no.3 falsely claimed their ownership on the said property on the basis of some false and frivolous documents which is clearly shows from the face of it.

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9. That the Debt Recovery tribunal appointed the local commissioner and the local commissioner as per order/direction dated 15-2-2005 in R.C. No.29/03 of the Debt Recovery tribunal with S.D.M./concerned patwari/Kanugoo inspected the said property on 4-4-2005 in presence of the defendants and filed the report before the tribunal in which they clearly stated that the said property i.e. A-1 04, Sharda Puri, New Delhi is measuring 266 sq. yds. and part of Khasra No.1447 and the contention raised by the defendant no.1 & 2 totally wrong and in the alleged documents of the defendant no.1 & 2 mentioned the Khasra No.1395 and further area shown as 400 sq. yds. and the said report clearly proved that the documents of the defendant no.1 & 2 is totally false, forged, frivolous and manipulated and the same is illegal and non-est in the eyes of law.

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11. That the defendant no.1 & 2 trying to grab the property of the plaintiff prepared false, frivolous and manipulated documents and the defendant no.1 & 2 are trespasser with calimance of the defendant no.3 in the said property of the plaintiff and the defendant no.1 & 2 have no right, title or interest over the said property.

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16. That the defendant no.1 & 2 are illegally occupied the



property of the plaintiff and they have no right, title or interest over the said property and they occupied the property with connivance of the defendant no.3 and the defendant no.1 & 2 enjoyed the property illegally and the plaintiff is get loss and the defendant no.1 & 2 are liable to pay appropriate mesne profit/damages to the plaintiff.

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19. That the cause of action arose in favour of the plaintiff and against the defendants on 4-4-2005 when the inspection has been carried out by the L.C. with officials of the S.D.M./patwari etc. as per direction of the DRT and confirmed the property of the plaintiff and the defendant no.1 & 2 trespassed the property of the plaintiff and again on 3-7-2009 when the DRT again directed to the SDM with the officials of the defendant no.4 by layout plan to inspected the suit property and the same was again confirmed by them and report given by them that the property belongs to the plaintiff and again arose on several times when the plaintiff given several complaints dated 19-3-2010, 5-4-2010, 14-5-2010, 15-11-2010 and on 13-1-2011 regarding illegal acts of the defendant no.1 & 2 and again on 24-4-2014 when the defendant no.1 & 2 with connivance of the defendant no.3 trying to get the original documents of the plaintiff and the plaintiff came to know about the conspiracy of the defendant no.1, 2 with the defendant no.3 and again on 20-4-2016 when the plaintiff came to know the defendant no.1 through her associates, attorneys etc. etc. and the defendant no.2 trying to sell or create third party interest over the said property and the cause of action is still continuing and same is still continue, hence this suit."

12. As per the aforesaid paragraphs of the plaint, it is crystal clear that the respondent No.1 presuming herself to be the owner of the subject property is seeking relief of possession of the property. Therefore, the contention of the



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learned counsel for the petitioner that the respondent No. 1 erred in not seeking declaration of title and only sought possession does not hold any water and the plaint discloses the cause of action.

13. *Qua* the contention regarding plaint being time barred, the bare perusal of the same clearly established that the respondent No. 1 had been earlier contesting her case with regards to the suit property before the learned Debt Recovery Tribunal from 2003 till 2014. Pursuant to which, the respondent No. 1 filed the plaint in 2016, hence, the plaint is not time barred.

14. In view of the aforesaid observations made by this Court, this Court is of the view that the plaint filed by the respondent No.1 discloses cause of action and is not time barred.

15. This Court is of the opinion that the learned Trial Court has taken into consideration all the contentions made by defendants No.1 and 2 (petitioner herein) as well as contents of the plaint, while passing the impugned order. It is observed that the learned Trial Court has also discussed the scope of the application under Order VII Rule 11 of the CPC and reached to the conclusion by giving sufficient reasoning while dismissing the said application.

16. Keeping in view the facts and circumstances, this Court does not find any cogent reason to interfere in the impugned order as also the judgment relied upon by learned counsel for the petitioner, during the arguments, is not applicable to the instant case as the said judgment was passed by the Hon'ble Supreme Court challenging the final decree. Hence, this Court does not find any merit in the instant petition.



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17. Accordingly, the petition alongwith the pending applications stand dismissed.

CHANDRA DHARI SINGH, J

JULY 19, 2024
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Click here to check corrigendum, if any

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