



2024:DHC:9180



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

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Date of decision: 7th November, 2024

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CM(M) 43/2020, CM APPL. 1790/2020 (stay)

SITA DEVI (DECEASED) THR LRS

.....Petitioners

Through: Mr. Chetan Sharma, Proxy Counsel.

versus

TAN SINGH RANA

.....Respondent

Through: None

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C.R.P. 103/2019

SITA DEVI (DECEASED) THR LRS & ORS

.....Petitioners

Through: Mr. Chetan Sharma, Proxy Counsel.

versus

TAN SINGH RANA @ TANNI

.....Respondent

Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. A Civil Revision Petition under Section 115 read with Section 151 of the *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed on behalf of the Petitioners (Plaintiffs in the Suit) whereby the Application under Order VII Rule 11 CPC, for rejection of the Suit filed by the



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Respondent/Defendant, has been allowed.

2. *Learned Proxy Counsel on behalf of the Petitioners*, appears through video-conferencing and seeks pass-over since the arguing Counsel is not available till 2:30 p.m.

3. On the previous date also, the adjournments were being taken on the personal difficulty of the learned Counsel.

4. Written Submissions have already been placed on record by the Petitioners, as well as, the Respondent.

5. Submissions heard.

6. *Briefly stated*, the case of the Petitioners was that the Respondent (defendant), who was his neighbour, agreed to sell a plot of land bearing No. 6/4, Block-A, Out of Khasra No.18/1/27, situated as Village Gharonda, Neem Ka Bangar @ Parparganj, Pandav Nagar, Delhi-110092, admeasuring 50 sq. yards @ Rs.500/- per sq. yards (*hereinafter referred to as Suit Property*). She made the payment of Rs. 25,000/- towards the sale consideration in regard to which Receipt dated 10.10.1985 was prepared, which was duly signed and witnessed by the two attesting witnesses. On 11.10.1985, she was handed over the physical possession of the Suit plot. The Defendant also took Rs.3,000/- from her for erecting a boundary wall around the Suit plot. According to her, she has continued to be in the peaceful possession of the Suit plot.

7. The Revisionists/Plaintiffs further claimed that since she was due to retire in August, 2005 and was required to vacate the government accommodation, she on 12.01.2001 onwards, started making demands in writing from the Respondent/Defendant, to hand over the documents of title



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but he failed to respond despite service of two reminder Notices dated 18.10.2002 and 08.01.2023 making written demands for handing over the possession. Though the possession remained with her but the Respondent failed to execute the requisite documents. She made a Complaint dated 07.08.2007 to the Commissioner of Police against the Defendant. Statement of herself and two independent witnesses, was recorded by the Police in the Police Station on 18.09.2007. Time and again, all her endeavours to prevail upon the Respondent to execute the requisite documents, did not yield any result.

8. To her utmost shock, she was served with the summons of *Civil Suit bearing No. 206/2012 in a Suit for Permanent Injunction* on 09.08.2012 wherein the Respondent herein, had sought an Injunction against the Petitioners, from interfering in their peaceful possession in the Suit premises. The Respondent had claimed himself to be the owner by virtue of the Sale Deed dated 07.02.2006, executed by him in his own favour, on the basis of a General Power of Attorney.

9. On 10.08.2012, when she went to the Suit premises, she found that there has been an endeavour to dispossess her and to remove her goods from the Suit Property. Various complaints got made to the Police. An FIR No. 379/2012 under Sections 448/380/34 of the *Indian Penal Code, 1860* ('IPC' hereinafter) dated 10.08.2012, was registered against her. Cross FIR bearing No. 380/2012 dated 10.08.2012, under Sections 323/341/354/406/506/34 of the IPC, was registered at Police Station Mandawali, Fazalpur against the Respondent. The disputes between the parties have continued.

10. The Petitioners herein served a Legal Notice dated 22.09.2012, upon



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the Respondent, to hand over the documents of the Suit Property and to perform his part of the Agreement but he has failed to do so. Hence, she filed a *Suit on 18.02.2012, for Specific Performance, Permanent and Mandatory Injunction*, in respect of the Suit Property, in respect of which she has already paid the entire Sale Consideration.

11. The *Respondent filed an Application under Order VII Rule 11 CPC*, for rejection of the Suit, as barred by limitation as the alleged Agreement is dated 10.10.1985, while the Suit has been filed on 20.10.2012.

12. The ***learned ACJ*** referred to the Receipt dated 10.10.1985, which was allegedly executed by the Respondent in favour of the Petitioner, in acknowledgment of having received Rs.25,000/- from her as part payment/earnest money on account of sale of the Suit plot, and observed that the alleged receipt did not contain the terms and conditions of the Agreement; for instance it only recorded a part-payment/earnest money but did not state the sale consideration and the dimensions of the Suit Property, and thus, the documents could not be taken as an Agreement to Sell of an immovable property. It was concluded that the purported Receipt could not be made a basis for a Suit for Specific Performance and the Suit was consequently rejected. Aggrieved by the said Order, the present Revision Petition has been filed.

13. The ***main grounds of challenge***, are that the Respondent has not filed any Written Statement and is silent on the merits of the case, but has chosen to file the Application under Order VII Rule 11 CPC, claiming that the cause of action had arisen in 1985 but the learned Trial Court has not addressed itself on the aspect of limitation. It has been wrongly held that the



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Receipt dated 10.10.1985, is not an Agreement to Sell but merely an acknowledgment of receipt of part-money. It has been completely overlooked that this Receipt was executed for the purpose of sale of Suit Property and not for any other purpose. The physical identity of the Suit Property, is not in dispute and she is in actual possession of the Suit Property and thus, mere non-mentioning of the dimensions of the Suit Property, could not have made it inexecutable. The contents of the Receipt in question, was a dispute of fact and could not have been made the basis for rejection of the Suit. Pertinently, it has been mentioned by the Petitioner that the Respondent is claiming to be the owner of this Suit Property by virtue of a Sale Deed dated 07.02.2006. Moreover, this Receipt has not been challenged by the Respondent, before any Court of competent jurisdiction or by way of Counter-Claim and thus, its existence and execution, is not in dispute. It is thus, submitted that the learned ACJ has acted in haste and has failed to appreciate that the Receipt is tantamount to a valid Agreement to Sell and the Suit of the Petitioner, could not have been out rightly rejected under Order VII Rule 11 CPC.

14. *Learned Counsel for the Petitioner*, has addressed arguments on similar lines as narrated above and has also filed Written Submission in support thereof.

15. *Written Submissions had been filed on behalf of the Respondent*, wherein it has been argued that a payment Receipt does not qualify as a valid legal Agreement to Sell as it lacked material particulars like signatures of the Petitioner, total sale consideration, date on which the balance amount was to be paid and Sale Deed to be executed and whether actual or symbolic



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possession of the premises had been given to the buyer. While the Receipts state that Rs.25,000/- has been paid as part-payment/earnest money but the Petitioner in Paragraph 5 of the Plaint, has alleged this to be the total sale consideration. Further, from Paragraph 6 onwards, she has claimed that the Respondent had executed the documents in her favour but failed to hand them over to her despite her repeated requests and demands and yet has sought the Suit for Specific Performance. It is submitted that there is no in ambiguity in the Order of the learned Civil Judge and the Suit has been rightly rejected.

16. Reliance has been placed on Brij Mohan vs. Smt. Sugra Begum, JT 1990 (3) SC 225 and Lalit Kumar Sabharwal vs. Ved Prakash Vijn, 2003 (68) DRJ 670 (Delhi).

17. Submissions heard and the record perused.

18. *The preliminary Objection has been taken on behalf of the Petitioners* that the Respondent has failed to file the Written Statement, but has chosen to file an Application under Order VII Rule 11 CPC, for rejection of the Suit, without disclosing his defence.

19. This *ground* is totally not tenable as the cause of action in a Suit, has to be determined from the facts narrated in the Plaint. The defence which the Defendant may take in the Written Statement is of no consequence, for it is the Plaintiffs, who have to stand on their own feet and disclose the complete bundle of facts, which would constitute a cause of action. This Objection on behalf of the Petitioners, is liable to be rejected.

20. The *second contention on behalf of the Petitioners*, is that the basic *ground of rejection of Suit that was taken was limitation*, which has not been



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addressed in the Impugned Order. It is pertinent to observe that it is the case of the Petitioner herself that the Respondent agreed to sale the Suit Property to the Petitioner and consequently, executed the Receipt dated 10.10.1985 in acknowledgment of Receipt of Rs.25,000/-, as sale consideration. According to her, on 11.10.1985, he took her signatures on various papers and handed over the physical peaceful possession of the Suit Property. She herself has alleged that because she was to vacate the Government accommodation by 2005 when she was due to retire, she had started making demands from the Defendant for handing over of the documents of title and even sent legal Notices dated 18.10.2002 and 08.01.2003 and even thereafter, but got no response.

21. It is her own case that the Defendant took her signatures on some blank papers/documents and kept the same with himself and she being an illiterate woman presumed that those signed papers were required for transfer of Suit Property in her name. From her own averments, first and foremost, any document for transfer of title in the Suit Property, is mandatorily required to be registered. Even if the contention of the Plaintiffs that she had signed some blank stamp papers is accepted, even then it cannot lead to any inference of any Sale Deed having been executed in her favour on 11.10.1985, as claimed by her.

22. From her own pleadings, it is evident that no registration of any sale documents, ever took place. Since there were no documents of sale that got executed, it emerges from her own pleadings that the Sale Deed was expected to be executed contemporaneously with the Receipt, which means the period of limitation for filing a Suit for Specific Performance arose on



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11.10.1985. Even thereafter, as per his own case, she had been issuing Notices in 2001 and 2003; even if the limitation is calculated from the date of formal Notices, then too it is beyond a period of three years.

23. In this context, it is rightly argued that on behalf of the Respondent that if the documents of Sale already got executed on 11.10.1985, then the present Suit for Specific Performance, is *otiose*; rather she should have sought the production of Sale documents as was being alleged by her in her formal Notices sent in 2001 and 2003 and not for Specific Performance. The present Suit has been filed on 18.10.2012, which is way beyond the period of three years. Her own averments in the Suit, are not only patently contradictory but also establish that her Suit is hopelessly barred by limitation.

24. It is pertinent to refer to the Judgment of Brij Mohan (supra) wherein the Hon'ble Supreme Court of India while considering an oral Agreement to Sell, had observed that the Plaintiff must establish vital and fundamental terms for Agreement to Sell in accordance with the general principles as contained in Section 55 of *Transfer of Property Act, 1882* regarding rights and liabilities of buyer and seller, which can only apply in the absence of a contract to the contrary and not in case where the parties consciously negotiated but failed in respect of any term or condition as a result of which the Agreement itself could not be settled or concluded.

25. In the present case, the entire case of the Petitioners rest on the Receipt dated 10.10.1985. The Petitioner is not incorrect in saying that the identity of the property, is not in dispute and that it was intended as a sale consideration, is also borne out from the said Receipt. However, it records



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that Rs.25,000/- has been paid as part-payment/earnest money while in her Complaint, she claims that the size of the plot was 50 sq. yards, which was sold @Rs.500/0 per sq. yards, totaling to Rs.25,000/-, which was received by the Respondent *vide* the Receipt in question. This implies that Rs. 25,000/- were towards entire Sale consideration.

26. Learned ACJ has rightly noted that there is an inherent contradiction in the Receipt and in the averments made by the Petitioners in the Suit and it is not discernible as to what was the sale consideration at which the property was intended to be purchased. In the absence of any clarity on this aspect of sale consideration, which is one of the main ingredients of an Agreement to Sell, it has been rightly observed by the learned ACJ that the Suit is not maintainable on account of the contradictions and the vagueness of the terms of the Agreement to Sell.

27. There is no infirmity in the Suit and the learned ACJ has rightly rejected the Suit.

28. The Petition bearing C.R.P. 103/2019 is disposed of accordingly.

CM(M) 43/2020 [Civil Suit (Old No.) 206/2012 and (New) No. 6956/2016], titled *Sh. Tan Singh Rana vs. Smt. Sita Devi (since deceased through LR's)*:

29. Petition under Article 227 of the Constitution of India has been filed on behalf of the Petitioners/ Sita Devi through LR's. against the Order dated 25.09.2019 *vide* which the abatement of Civil Suit (Old No.) 206/2012 and (New) No. 6956/2016, titled *Sh. Tan Singh Rana vs. Smt. Sita Devi (since deceased through LR's)*, was set-aside and the Suit was restored to its original number.



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30. Sh. Tan Singh Rana, the Respondent/plaintiff, filed cross Suit in respect of the Suit Property, for restraining the Revisionists/defendants, her legal representatives, agents, attorneys, assignees and successor in interest etc. from dispossessing the Respondent (plaintiff), Sh. Tan Singh Rana, from the Suit Property. Smt. Sita Devi, the Petitioner died on 26.02.2017 and consequently, an Application under Order 22 Rule 4 of CPC, was filed for substitution of her legal heirs. On 16.11.2017 while the substitution Application was pending consideration, since none appeared on behalf of the Respondent, Suit was dismissed by observing that the relief claimed in the Suit against Smt. Sita Devi, was personal and on her demise, the cause of action stands abated.

31. The Application under Order 22 Rule 9 CPC, was filed on behalf of the respondent, Tan Singh for setting aside the abatement Order dated 16.11.2017, which was allowed vide the impugned Order dated 25.09.2019. Aggrieved, the petitioners filed the present revision petition.

32. Submissions heard.

33. The learned ACJ has rightly observed that the Respondent had claimed the relief of protection of his possession in the Suit Property not only from the Petitioner (since deceased) but also from her legal heirs, representatives, successors-in-interest etc. The relief was thus, held to be not personal and upon her demise, it survived against her legal heirs.

34. Since the abatement Order dated 16.11.2017 was made in the absence of the Respondent, it was rightly set aside and the Application under Order 22 Rule 4 CPC, has been rightly allowed against the legal heirs of deceased Smt. Sita Devi against whom the right to sue survived.



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35. There is no infirmity in the impugned Order dated 25.09.2019 and the Revision Petition is hereby, dismissed.

36. The Revision Petition is accordingly disposed of along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 7, 2024/RS