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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 4th November, 2024+ **C.R.P. 213/2023, CM APPL. 40897/2023 (stay), CM APPL. 40898/2023 (under Order XXXII Rule 1 and 15 read with Section 151 CPC)**

ANIL KUMAR SHARMA & ORS

.....Petitioners

Through: Mr. Abhijat, Mr. Amit Sharma, Mr. Ravinnder Singh, Mr. Himmat Anand, Mr. Harsh Vardhan, Advocates.

versus

AWADH KISHORE

.....Respondent

Through: Mr. Salim Malik, Mr. Shavana, Mohd. Azam, Advocates along with LR's of defendant namely Aashish and Rohit.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****C.R.P. 213/2023:**

1. The Civil Revision Petition under Section 115 of the *Code of Civil Procedure*, 1908 ('CPC' hereinafter) has been filed on behalf of the Petitioners to challenge the Order dated 06.06.2023 *vide* which the learned ADJ has rejected the Application under ***Order VII Rule 11 read with Section 151 CPC***, filed on behalf of the Petitioners (Defendants in the Suit).
2. It is submitted that the Civil Suit No. 376/2022, titled *Awadh Kishore*



vs. Anil Kumar Sharma & Ors. has been filed by the Plaintiff seeking Possession and Damages in respect of the *Suit Property* bearing No. S-213 measuring 400 Sq. yds. School Block, Pandav Nagar, Delhi-110092. It was asserted that he had purchased this property from one Mr. Prem Narayan s/o Sh. Shiv Narayan by virtue of GPA, Agreement to Sell and registered Receipt on 26.03.1982. As per the Plaint, the Defendants got one person Mr. Nathu Ram entered into the Suit property on 15.12.1983 and the Plaintiff was made to hand over the keys of the Suit Property to him in December, 1984. The Plaintiff was made to sign some blank papers and stamp papers allegedly on the false assurance that the defendant shall get the premises vacated from Mr. Nath Ram, however, on becoming aware of the ill-intention of the Defendants, the Plaintiff lodged a written Police Complaint against the Defendants. It was further alleged in the Plaint, that in the year 1987, Mr. Nathu Ram vacated the Suit premises and the Plaintiff resumed his possession, and he remained in the Suit Property till July, 1990 where after he started residing at his previous place of residence, though his children have been taking care and visiting the Suit Property regularly.

3. *The Plaintiff further alleged* that in the month of June, 2022, the Defendants broke open the lock of the Suit Property and forcibly took the possession. The Plaintiff thus, filed the Suit for Possession and Damages. The Defendants filed an Application under Order VII Rule 11 read with Section 151 CPC and Section 3 of the *Limitation Act, 1963* seeking rejection of the Plaint on ground that the Suit of the Respondent was *barred by limitation and also did not disclose any cause of action*.

4. The learned ADJ *vide* impugned Order dismissed the Application under Order VII Rule 11 CPC filed by the Defendants *vide* its Impugned



Order dated 06.06.2023.

5. Aggrieved by the said Order, the Revision Petition has been filed by the Petitioners (Defendants in the Original Suit). The basic ground taken is that the limitation, according to Entries 64 and 65 of Schedule I of the *Limitation Act, 1963* is 12 years from the date of dispossession. *In the present case*, the documents and the material placed on the record by the Plaintiff (Respondents), shows that he was not in possession of the Suit property ever after 1984. The relief of possession sought by the Plaintiff after almost 38 years, is barred by limitation.

6. Moreover, the title of the Plaintiff, is under the cloud as he is not in possession and the relief of possession is not maintainable without seeking a relief of Declaration especially when the Plaintiff himself has admitted that his legal rights *qua* the Suit Property, were violated by the Defendants in the year 1983-84.

7. The impugned Order is assailed on the ground that the burden has been wrongly placed on the Petitioners/Defendants, to prove that they became owners of the Suit Property, after it got sold to them by the Plaintiff. While considering an Application under Order VII Rule 11 CPC, the defence of the Defendants, is of no significance. There is clear admission by the Plaintiff in his Plaint that he had signed some blank papers and stamp papers on the asking of the Defendants and thus, from the averments itself, it is evident that the documents have been executed in favour of the Defendants/revisionist in the year 1984, but still no relief of Declaration is sought. The Petitioners/Defendants have placed reliance on Anathula Sudhakar vs. P. Buchi Reddy (Appeal Civil No. 6191/2001) and T. Arivandandam vs. T.V. Satyapal, 1977 (4) SCC 467.



8. It is claimed that the learned ADJ has failed to appreciate the averments made in the Plaint itself, to consider that the Suit was filed beyond the limitation. As per the Article 58, the period of limitation commences from the day when the right to sue accrues. This Suit is nothing but an abuse of process of law to extract money from the Defendants by putting their immovable property into the dispute litigation. It is, therefore, submitted that the impugned Order is liable to be set-aside and the Suit of the Plaintiff, is liable to be rejected.

9. *Learned counsel on behalf of the Respondent/Plaintiff*, has vehemently submitted that there are specific averments made in the Plaint that the Plaintiff became owner of the Suit Property way back in 1982, by virtue of Agreement to Sell, GPA, etc. Since then, he has been in continuous possession of the Suit Property. Initially, on his request, the defendant had inducted Mr. Nathu Ram to be the care taker in the Suit Property but subsequently, he had requested the defendants to ask him to vacate the property. Eventually, when the Defendants did not come forth to the assistance of the Plaintiff, they made a police Complaint and eventually, Mr. Nathu Ram vacated the Suit Property in 1987.

10. The Plaintiff in Order to protect the property, came back to reside in the Suit Property but eventually in 1990, he shifted to his earlier place of residence even though the possession continued to be of the Plaintiff till June, 2022 when the Defendants broke open the locks and forcibly took possession of the Suit Property. It is argued on behalf of the Respondents/Plaintiff that the possession of the Plaintiff, has been continuous and has been disrupted only in June, 2022. On the basis of an Agreement to Sell, GPA etc, the possession of the Suit Property, is sought



by way of the Suit.

11. Submissions heard.

12. It is a Suit for possession that has been filed by the Plaintiff wherein on the basis of their title/ownership, the possession is sought from the Defendants. In order to sustain a Suit for Possession, the Plaintiff is liable to show the documents of ownership. He has nothing in his favour except an Agreement to Sell, GPA and the registered Receipt dated 26.03.1982 executed in his favour by Sh. Prem Narayan. It has been explicitly explained in the case of Suraj Lamp & Industries (P) Ltd. Through Director vs. State of Haryana, AIR 2012 SC 206, that the Agreement to Sell merely creates a right to get the Sale Deed executed in future. In itself, it is not sufficient to create any title or ownership right in favour of the person who is holding the Agreement to Sell. Likewise, GPA merely authorises such person to act for and on behalf of the owner but does not create any independent right, title in the Plaintiff.

13. The documents which have been relied upon by the Plaintiff, do not confer any ownership or title on the Plaintiff.

14. As has been rightly pointed out on behalf of the Petitioners/Defendants, the Plaintiff himself has mentioned that he was made to sign some blank papers/stamp documents in 1984, in favour of defendants and they inducted Sh. Nathu Ram as the care-taker. Apparently, those are the title documents which were executed by the Plaintiff in favour of the Defendants who admittedly, inducted their care taker in the suit property.

15. If the Plaintiff felt that he had been tricked into signing some blank papers and documents, he neither never made any complaint or sought a



Declaration for those alleged documents to be declared null and void. He also has never given any Notice since 1984 till the filing of the Suit in 2022, to seek the return of those documents.

16. It is evident that there is no document of title in favour of the Plaintiff on the basis of which he can seek possession. Moreover, the alleged Agreement to Sell, etc while may entitle a person to protection of possession under section 53A of *Transfer of Property Act, 1882* from the person who has executed the documents in his favour, but cannot be a basis to seek possession against the third Party. There is no cause of action disclosed in the Suit.

17. The impugned Order dated 06.06.2023 dismissing the Application under Order VII Rule 11 CPC filed on behalf of the Revisionists/Defendants, is allowed and the Suit of the Plaintiff/Respondent, is hereby rejected for want of cause of action.

18. The Petition is disposed of accordingly along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 4, 2024/RS