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

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Date of decision: 22nd May, 2024

+ C.R.P. 227/2023, CM APPL. 42652/2023

LALIT KUMAR

..... Petitioner

Through: Mr.R.K.Saini and Ms.Neelam
Saini, Advocates.

versus

KOMAL SINGH AND ANR

..... Respondents

Through: Mr.Hem C.Vashisht, Advocate.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioner, who is defendant in the suit for declaration and permanent injunction instituted by respondent No.1/plaintiff, assails impugned order dated 19.07.2023 passed by learned ADJ-7, South East District, Saket Courts, New Delhi¹ whereby his application under Order VII Rule 11 of the CPC² has been dismissed.

2. Having heard learned counsels for the rival parties and on perusal of the record, at the outset this Court finds that the present revision petition under Section 115 CPC is bereft of any merits.

3. Shorn of unnecessary details, the petitioner claims that he had purchased the property in question vide registered Sale Deed dated 08.12.2017 from the legal heirs of one Sohan Lal. It is stated that at

¹ Trial Court

² Code of Civil Procedure



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the time of purchase of the property, one Bihari Singh was a tenant in one room divided into two, kitchen, bath and common latrine at monthly rent of Rs.15/- excluding water and electricity charges in the suit property.

4. It is the case of the defendant that after death of Bihari Singh, his son Yogender Pal Singh unlawfully sub-let the tenancy premises to respondent No.1/plaintiff. It appears that an eviction petition has already been instituted by the petitioner/defendant under Section 14(1)(b) of the Delhi Rent Control Act, in which the matter has reached the stage of recording of evidence i.e. Yogender Pal Singh and respondent No.1/plaintiff. Insofar as the instant suit is concerned, respondent No.1/plaintiff asserts that late Bihari Singh was her uncle, who had purchased the property bearing Municipal No.938/2 situated at Mahveer Nagar, Gurdwara Road, Kotla Mubarak Pur, New Delhi (part of Khasra No.310) measuring about 20 sq.yds. with one kachcha room constructed thereupon by virtue of Agreement to Sell dated 08.12.1964 and it was her uncle who raised construction, thereupon on the terrace in 45 years of his occupation before he expired in 2011. The plaintiff/respondent No.1 has alleged that defendant (i.e. the petitioner in the present revision petition) is attempting to dispossess her from the premises in question.

5. In a nutshell, she seeks declaration for declaring Sale Deed dated 08.12.2017 in favour of the petitioner/defendant to be declared null and void, based on forged and fabricated signatures of the legal heirs of Sohan Lal and also seeking declaration that in the alternative



the aforesaid Sale Deed 13.12.2017 does not belong to property bearing No.938/2 and other consequential reliefs.

6. To cut the long story short, the learned ADJ has rightly observed that on a meaningfully perusal of the pleadings/averments in the plaint, there is nothing to suggest that it suffers from the vice of not having any cause of action and/or the same being barred by limitation. Learned trial court has rightly observed that the decision in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.**, SLP (C) No. 13917/2009 is not applicable since the reliance on Agreement to Sell dated 08.12.1964 by the plaintiff so as to prove the ownership of her deceased uncle Bihari Singh is not hit by the aforesaid judgment and the said plea can very well be entertained in order to defend possessory rights under section 53A of the Transfer of Property Act.

7. Further, the plea by the petitioner/defendant that Will dated 23.11.2009 allegedly executed by Bihari Singh Verma in favour of the plaintiff is a forged and fabricated document cannot be decided at this stage. The crux of the matter is that the issues which are being raised by the petitioner/defendant are triable issues. His defence that he is the owner of the premises in question by virtue of registered Sale Deed dated 08.12.2017 is matter of trial. Likewise, whether or not respondent No.1/plaintiff is succeeding to any legal rights that existed or vested in deceased Bihari Singh is also a matter of trial.

8. During the course of arguments it was conceded that the matter is listed for evidence of the plaintiff after framing of issues, and apparently there is another issue as to whether or not the documents in



question belong to the property in question which could only be thrashed out after recording of evidence of the parties by the learned trial court.

9. In view of the foregoing discussion, I find that there is no merit in the writ petition. The revision petition is dismissed. Nothing contained herein shall tantamount to expression of opinion on the merits of the cases pending between the parties.

10. Pending application is also disposed of.

DHARMESH SHARMA, J.

MAY 22, 2024

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