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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 24th October, 2024***+ **C.R.P. 204/2022, CM APPL. 53996/2022****SH. NAND KISHORE**

.....Petitioner

Through: **Mr. V.P. Rana, Ms. Bhawana and Ms. Jyoti Nambiar, Advocates.**

versus

SH. RAJAN GUPTA & ORS.

.....Respondents

Through: **Mr. A.C. Bhasin and Mr. Anil Bhasin, Advocates for R-1.****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 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed to challenge the *Order* dated 07.04.2022 vide which the Application under Order VII Rule 11 CPC, 1908 filed by the Revisionist/defendant in the Civil Suit No. 8669/2016 has been rejected.

2. ***Briefly stated***, the plaintiff/respondent had filed a *Civil Suit for Declaration* that he was the owner of the suit property and for *Permanent Injunction* for restraining the defendant from dispossessing him illegally.

3. *The Written Statement* was not filed on behalf of the Revisionist/defendant within time and eventually the right to file Written Statement was closed, against which the C.M. Main is pending



before this Court. In the interim, the suit proceeded and after the recording of the evidence of the plaintiff, is pending at the stage of final arguments.

4. *In the interim*, the plaintiff/respondent herein filed another *Suit No.951/2017 seeking Cancellation of the alleged Sale Deed dated 14.10.2013* when the defendant started asserting his ownership on the basis of a registered *Sale Deed dated 14.10.2013* in respect of the suit property, allegedly executed in his favour by the plaintiff. However, an Application under Order VII Rule 11 CPC, 1908 was filed on behalf of the defendant herein, in the said Suit, which was allowed and the *Suit was held to be barred by limitation*. This Order was not challenged by the plaintiff and it attained finality.

5. Thereafter, the defendant/revisionist filed an Application under Order VII Rule 11 CPC, 1908 in the present Suit of the Plaintiff, for rejection of the Suit in the light of the subsequent litigation in Suit No.951/2017, wherein the challenge to Sale Deed was held to be time barred. It was claimed that once the challenge by the plaintiff to the Sale Deed in favour of the defendant, has not met any success and the Suit has been dismissed, there subsists no cause of action in favour of the plaintiff to seek Declaration of his ownership on the basis of an earlier Sale Deed in his favour dated 13.09.1991. He has ceased to be the owner on account of execution of a registered Sale Deed in favour of the defendant. The cause of action in favour of the plaintiff has ceased to exist and therefore, the suit is liable to be rejected.

6. It is asserted that the learned Trial Court fell in error in rejecting his Application under Order VII Rule 11 CPC, 1908 as no



subsisting cause of action exists in favour of the plaintiff. Reliance has been placed on Shipping Corporation of India vs. Machado Brothers and Ors. AIR 2004 SC 2093.

7. ***Learned counsel on behalf of the respondent/plaintiff*** has refuted the averments made on behalf of the petitioner and has submitted that the learned Trial Court in the detailed *Order dated 07.04.2022*, has observed that the cause of action in the present suit is different from the cause of action that was agitated in the subsequent suit. *Secondly*, the subsequent suit has been dismissed on the technical ground of limitation and not on merits. *Thirdly*, the dismissal of subsequent suit in an event which cannot affect the cause of action which was subsisting in favour of the plaintiff at the time of institution of the suit. *Finally*, mere dismissal of a subsequent suit, is not sufficient to hold the present suit infructuous. It is claimed that the Application under Order VII Rule 11 CPC, 1908 of the defendant has been rightly rejected.

8. It is further submitted that the evidence of the plaintiff already stands concluded in the Suit and the case is at the stage of Final Arguments. It is further submitted that this alleged *Sale Deed dated 14.10.2013* on which reliance has been placed by the defendant, was never executed by the plaintiff. It does not bear his signatures or not has the photograph of the plaintiff. It is blatantly a forged Sale Deed in regard to which a Complaint under Section 200 Code of Criminal Procedure, 1973 (“Cr.P.C” *hereinafter*) has already been filed before the Court of learned M.M., which also is at the stage of Final Arguments.



9. It is further submitted that *the cause of action* in the subsequent suit was for cancellation of the alleged Sale Deed dated 14.10.2013 in favour of the defendant, while in the present suit the plaintiff has sought Declaration of ownership on the basis of a Sale Deed dated 13.09.1991. The subsequent facts as alleged by the defendant, need to be proved by him in appropriate proceedings and cannot be made a basis for rejection of the suit especially when no such defence has come on record because his right to file the Written Statement has been closed. It is, therefore, submitted that there is no illegality in the impugned Order and the petition is liable to be dismissed.

10. **Submissions heard.**

11. The plaintiff has filed a *Suit for Declaration of ownership* in the Suit property, on the basis of a original Sale Deed dated 13.09.1991 which essentially has also not been challenged by the defendant. His only defence, though not brought on record in his Written Statement, is that there is a subsequent *Sale Deed on 14.10.2013* in his favour that was executed by the plaintiff. However, the said fact is not on record. Moreover, the plaintiff has been challenging the genuineness of this subsequent Sale Deed on which reliance has been placed by the defendant. The learned ADJ has rightly observed that the Declaration of the title sought by the plaintiff is confined to the Sale Deed dated 13.09.1991. It has also been rightly observed that the defence as projected by the defendant, has not come on record. His reliance on the rejection of the subsequent Suit filed by the plaintiff can also not defeat his claim because it was a dismissal on technical grounds and there was no finding on merits. In case the defendant is seeking to establish his



ownership on the basis of the Sale Deed dated 14.10.2013, there is nothing which prevents him to do so in accordance with law.

12. However, it has been rightly observed by the learned ADJ, the alleged documents on which the defendant seeks to place reliance, were not been taken on record in the present Suit and thus, cannot be considered. The Plaint when read as a whole, does disclose a cause of action. The Application under Order VII Rule 11 CPC has been *rightly rejected*.

13. There is no merit in the present petition which is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 24, 2024/va