



2024:DHC:6733-DB



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

+ **FAO(OS) 118/2024 & C.M.Nos.50406-50407/2024**

HARVEEN SINGH CHADHA @ LOVELY & ANR.Appellants

Through: **Mr.Abhishek Kamal and Mr.Sanjay
Kumar Yadav, Advocates.**

versus

BALVEEN SINGH CHADHA @ RICKYRespondent

Through: **Mr.L.S.Solanki, Advocate.**

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Date of Decision: 02nd September, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the order dated 15th May, 2024 passed by the learned Single Judge of this Court in I.A. No. 2728/2024 in CS(OS) 712/2023, whereby the application filed by the Appellants (Defendant Nos.1 & 2 therein) under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") seeking rejection of plaint was dismissed on the ground that the Respondent herein (Plaintiff therein) has averred that he has an equal right in the subject property and that the learned Single Judge, at this stage in the Suit, cannot go into the disputed questions of fact or law to invoke jurisdiction under Order VII Rule 11, CPC and must limit itself to the averments made in the plaint. The subject suit has been filed by the Respondent herein seeking partition of the subject properties.



2. Learned counsel for the Appellants states that the learned Single Judge has failed to appreciate that the subject suit is barred by limitation as the subject property was purchased by the Appellants on 21st November, 2005 and the suit was filed after a lapse of seventeen years on 6th November, 2023.
3. He further states that the learned Single judge while dismissing the Respondent's application bearing I.A. No. 22013/2023 under Order XXXIX Rule 1 & 2, CPC has himself stated that there is no *prima facie* case in favor of the Respondent (Plaintiff therein) owing to the registered sale deed dated 21st September, 2005. Consequently, according to him, no legal right accrues in favor of the Respondent with regard to the subject property and the subject suit is bereft of any cause of action and must be rejected under Order VII Rule 11, CPC.
4. A perusal of the impugned order reveals that the learned Single Judge has only stated that no *prima facie* case was made out by the Respondent with regard to the application under Order XXXIX Rules 1 & 2, CPC owing to the presumption of genuineness of the registered sale deed dated 21st September, 2005. However, it is important to bear in mind that the said presumption is a rebuttable one.
5. Further, the ownership of the subject properties is a disputed question of fact and the learned Single Judge has correctly held that at this stage in the subject suit, the Court must limit itself only to the averments made in the plaint to decide an application under Order VII Rule 11, CPC.
6. It is also settled law that partition is a continuing cause of action. Consequently, at this stage, it cannot be said that the subject suit is barred by limitation.



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7. Accordingly, the present appeal, being bereft of merit, is dismissed along with the pending applications.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 02, 2024
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Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 02.09.2024
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