



2024:DHC:7886-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 141/2024 & C.M.No.59667/2024****SMT. SUMITA MARWAH**

.....Appellant

Through: **Mr.Devashish Marwah with
Ms.Aneesha Rastogi, Advocates.**

versus

MR. VIKAS VIJ & ORS.

.....Respondents

Through: **Ms.Jaspreet Kaur, Advocate for R-3
& 4.**

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Date of Decision: 09th October, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, C.J : (ORAL)**

1. Present appeal has been filed challenging the order dated 05th August, 2024 passed by the learned Single Judge in CS(OS) No.185/2024 whereby the learned Single Judge rejected the objections filed by the Appellant herein under Order XXIII, Rule 1 (3) and (4) CPC with respect to maintainability of the subject suit.

2. Learned counsel for the Appellant states that the subject suit was preferred by the Respondent nos. 1 and 2/Plaintiffs for declaration of title and possession of one shop (out of four shops) on the ground floor with basement, which forms part of a two and a half stories building located at plot no. 83, Block-P, Gali No.19/20, situated at Naiwala Estate, Beadon Pura, Karol Bagh, New Delhi ("subject property").



3. He states that the Appellant is the sole owner of the subject property with the title vested in her since 2006 and she has been in continuous physical possession of the property since 2006.
4. He states that on 29th July, 2021, Respondent nos.1 and 2/ Plaintiffs filed a suit bearing no. CS (SCJ)1628/2021 before the Tis Hazari Courts, Central District, Delhi (“Suit-2021”) *inter alia* seeking a decree of declaration of title and possession in favour the Respondent nos.1 and 2 for the subject property involving the same parties as in the subject suit.
5. He states that Respondent nos.1 and 2 filed a second application seeking amendment of Suit-2021 (the first application was dismissed as withdrawn) pursuant to the liberty granted by this Court vide order dated 19th April, 2023 passed in CM(M) No. 622/2023.
6. He states that after arguments were heard on the second amendment application on 21st November, 2023, Respondent nos.1 and 2 orally withdrew the Suit-2021 on 10th January, 2024.
7. He states that on 2nd March, 2024, Respondents nos.1 and 2 filed the subject suit with the same cause of action, same parties and claiming reliefs with respect to the same subject property as in Suit-2021.
8. He submits that the learned Single Judge erred in holding that every withdrawal of a suit allowed by a Court of law is always with liberty to file the same afresh, while also dispensing with the requirement of filing an application under Order XXIII, Rule 1(3) CPC. He states that no leave was granted to Respondent nos.1 and 2 to file the subject suit after they had simply withdrawn the Suit-2021 on 10th January, 2024.
9. He emphasizes that the learned Single Judge failed to take into consideration that the prayers in the subject suit are barred by limitation.



10. Having heard learned counsel for the Appellant and having perused the paper book, this Court finds that Respondent no.2 made a statement dated 10th January, 2024 before the Trial Court seeking permission to withdraw the suit with liberty to file a fresh suit and in pursuance of this statement (which was recorded separately), the Trial Court allowed Respondent nos.1 and 2 to withdraw the suit-2021.

11. In our opinion, the order dated 10th January, 2024 granted liberty to Respondent nos.1 and 2/Plaintiffs to file a fresh suit. In fact, the order dated 10th January, 2024 passed in CS (SCJ) 1628/2021 vide which permission was granted to Respondent nos.1 and 2 has not been challenged by the Appellant and has thus attained finality.

12. The law is well settled that if permission has been sought for withdrawal of the suit seeking liberty to file a fresh suit and the Court has passed an order permitting the plaintiff to withdraw the suit, such an order has to be construed as an order granting liberty as prayed for. The Court cannot split the prayer made by the party.

13. As far as the plea of limitation is concerned, this Court is of the view that the Appellant is at liberty to raise the same during the trial.

14. Accordingly, the present appeal being bereft of merit is dismissed along with the application.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

**OCTOBER 09, 2024
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