



2024:DHC:8528



\$~49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 25th October, 2024***
+ **C.R.P. 313/2024, CM APPL. 63263/2024 (stay)**

SUDARSAN

.....Petitioner

Through: Mr. Ishan Sanghi, Advocate and Ms.
Poorvashi Kalra, Advocate.

versus

SUMITRA DEVI & ORS.

.....Respondents

Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)****CM APPL.63265/2024 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CM APPL. 63264/2024 (delay)

3. The Application under Section 5 of the Limitation Act has been filed on behalf of the petitioner for condonation of delay of 118 days in filing the accompanying Petition.
4. For the reasons stated in the Application and in the interest of justice, the delay of 118 days in filing the accompanying Petition is condoned.
5. The Application is allowed and disposed of accordingly.

C.R.P. 313/2024

6. The Civil Revision Petition under Section 115 of CPC has been filed



2024:DHC:8528



on behalf of the petitioner/Defendant to challenge the Judgment and Decree dated 23.02.2024 whereby the *Suit for Possession under Section 6 of the Specific Relief Act, 1963* has been decreed in favour of the respondents/plaintiffs.

7. *The plaintiffs/respondents, Smt. Sumitra Devi and Mukesh Kumar had claimed* that since 1993, they were in possession of the Suit Property bearing No. B-78, T Huts, B-Block, Sahibabad Dairy, Delhi-110042 measuring approximately 50 Sq. Yds. comprising of two rooms, one kitchen cum rooms and latrine, *(hereinafter referred to as Suit property)* as shown in red colour in the Site Plan annexed with the Plaint. In the year 2005, his real brother Mr. Sudarshan *(who was defendant No.2 in the Suit)* along with his wife, Smt. Kalindi @ Rajni *(who was defendant No.1 in the Suit)* came from Gaurakhpur, Uttar Pradesh to Delhi. The plaintiff/respondents in January, 2021, demolished one room cum kitchen and started to reconstruct the same. When the reconstruction was almost completed, the defendants entered into the Suit Property and took possession of the said room cum kitchen on 08.01.2021. The Suit for restoration of the possession, was filed by the respondents for restoration of possession under S.6 Specific Relief Act.

8. *The defendants/revisionist in their Written Statement* challenged the identity of the property and claimed them to be distinct. They claimed that the property of the plaintiffs bears No. B-78, T Huts, B Block, Shahbad Dairy, Delhi while the house in possession of the revisionist bears No. 45, Shahbad Dairy, Delhi. In the absence of the defendants, the possession of his property was forcibly taken by the plaintiffs, by playing fraud. House No. 45 was illegally demolished and construction material was stolen. The plaintiffs constructed their own kitchen, toilet and step ladder.



2024:DHC:8528



9. On 05.01.2021 at 8:00 pm, the defendant and her husband were assaulted and Rs.2,000/- were taken away from the defendants. The defendant and her husband were again assaulted on 31.03.2021 and 12.08.2021. The police along with the plaintiffs, had physically and mentally tortured the defendants to grab House No. 45 by fraud and force.

*The defendant No. 2 adopted the **Written Statement** filed on behalf of defendant No. 1.*

10. The plaintiff, Smt. Sumitra Devi has examined herself as PW-1. PW-2 Mr. Horik Prasad tendered his Affidavit by way of evidence Ex.PW-1/A and PW-3, Mr. Mukesh has tendered his Affidavit by way of evidence, Ex.PW-3/A.

11. The defendant was given an opportunity to adduce evidence, which was closed *vide* Order dated 24.07.2023.

12. *The learned Trial Court in the detailed Impugned Judgment*, referred to the oral and documentary evidence led by the plaintiff and observed that the only defence of the defendant was that the Suit Property, which was claimed to be bearing No. B-78, T Huts, B-Block, Sahibabad Dairy, Delhi-110042 was in fact Jhuggi No. 45. However, there was no evidence whatsoever led by the defendants/revisionist, to prove that the identity of the Suit Property has not been correctly stated. The Suit of the Plaintiffs was accordingly, decreed under S.6 Specific Performance Act. Aggrieved by the said Judgement, the petitioner/defendants filed the present Revision Petition.

13. Submissions Heard and the Record perused.

14. The defendant/revisionist was in possession of the Suit property, which is not disputed. However, the plaintiff/respondents claimed that the Suit Property bears the No. B-78,T Huts, B-Block, Sahibabad Dairy, Delhi.



2024:DHC:8528



However, while the defendant/revisionist did not dispute the possession but the only defence was that this property had the No. B-78 is Jhuggi No. 45. The only dispute raised was about the correct property number.

15. Significantly, the onus was on the defendant to prove the property Number as alleged by them. However, despite opportunities being granted, no evidence was led by them before the trial Court. On the other hand, the plaintiff led oral evidence of herself and PW-2 Sh. *Horik Prasad* which was corroborated documentary evidence, namely their *Ration Card, Identity Cards and Electricity Bill*, in proof of the identity of the suit property.

16. The learned Judge duly considered the evidence and also the documents to conclude in favour of the Plaintiff. The relevant paragraphs of the impugned Judgment, read as under:-

“15. This court has carefully examined the oral and documentary evidence led by plaintiffs. Ex.PW1/3 which is New Ration Card of Horik Prasad the same also shows address of B-78, T Huts B Block, Sahabad Dairy, Delhi. The same also shows name of family member of plaintiffs. Further Ex.PW-1/8 is current Ration Card which also bears the address of B-78, T Huts B Block, Sahabad Dairy. Names of plaintiffs is specifically mentioned in the Ex.PW-1/8. Further Ex.PW-1/7 identity Card issued by Election Commission of India of Sumitra Devi on 18.10.2008 also shows address of B-78, T Huts B Block, Sahabad Dairy, Delhi. Ex.PW-1/6 Aadhar Card of Sumitra Devi also shows address of B-78, T Huts B Block, Sahabad Dairy, Delhi. Ex.PW-3/1 is Electricity Bill in the name of plaintiff no. 2 / Mukesh Kumar which shows address of B- 78. Further Ex.PW-3/2 is Aadhar Card of Mukesh which shows the address of B-78, T Huts B Block, Sahabad Dairy, Delhi i.e. of the suit property.



2024:DHC:8528



16. It is plaintiffs' case that they wanted to reconstruct one room cum kitchen. For reconstruction cement and bricks were purchased. The bills regarding the same are Ex.PW-2/1 dated 04.01.2021 and Ex.PW-2/2 dated 08.01.2021 which shows the address of B-78, T Huts B Block, Sahabad Dairy, Delhi i.e. of the suit property.

17. It is plaintiff's case that when reconstruction was near completion, defendant no. 1 and 2 took forcible possession on 08.01.2021. Regarding forcible possession, a complaint Mark B was given in which Sumitra Devi has complained that: her brother and sister in law were away in the village. On 06.01.2021, sister in law came and started residing in the suit property. Brother of the plaintiff no. 1 also came. They started beating husband of plaintiff no. 1 and refused to vacate the suit property. Another complaint Mark 'C' was given regarding this, reference number was generated and message received on 28.01.2021. It is important to note that at time of tendering of documents on 08/12/22 no objection regarding mode of proof was taken by defendants. Complaint bears stamp of receipt. It was duly proved."

17. The learned Trial Court by its reasoned Order after due consideration of ocular and documentary evidence, has held that the plaintiffs/respondents to be entitled to possession of the Suit Property bearing No. B-78,T Huts, B-Block, Sahibabad Dairy, Delhi-110042. The Defendants have failed to prove their defence. The Suit has been rightly decreed. There is no infirmity in the impugned Judgment dated and Decree dated 23.02.2024.

18. The Revision Petition is dismissed and disposed of accordingly along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 25, 2024/RS