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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 321/2024, CM APPLs. 64219/2024 & 64221/2024**
BRAHAM PRAKASH AND ORSPetitioners

Through: Mr. Diwas Kumar, Mr. Shraveen
Kumar Verma, Mr. Shivam Sharma,
Mr. Devashish Shandilya, Mr. Arpit
Singh and Mr. Shubham Mishra,
Advs.

versus

BIRPAL

.....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **29.10.2024**

CM APPL. 64220/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 321/2024

1. The Revision Petition under Section 115 CPC has been filed against the Order dated 23.04.2024 vide which the Application under Order VII Rule 7 CPC of the revisionist/defendant, has been rejected.
2. The plaintiff had filed a Suit for *Permanent and Mandatory Injunction* by asserting that he is the **owner** of the suit property, on the basis of a Sale Deed dated 18.10.2021. It has been explained in detail in the plaint that the suit property which is a plot of land measuring 121/66 Sq. Yards out of Khata Khatoni No. 184/64, Khasra No. 204 (0-18), 206 (0-19), 207 (0-18),



208 (1-02), 209 (1-3) & 65 (02-06) measuring 7 Bighas and 06 Biswas situated in extended Laldora Abadi of Village Badusarai, New Delhi, was in the co-ownership of late Shri Nand Kishore and he was in possession of 1/30th share Khasra Khatoni no. 184/64, Khasra no. 204(0-18), 206(0-19), 207(0-18), 208(1-02), 209(1-03) & 65 (2-06) total area measuring 07 Bigha 06 Biswas situated in the extended Laldora Abadi of Village Badusarai, New Delhi. It is further stated that Sh. Nand Kishore died on 16.06.1995 and his wife Smt. Shakuntla Devi died on 08.11.1994. He was survived by his two sons Narender and Pawan and two daughters Anita and Sunita (now deceased). On 08.10.2021, Smt. Anita released her complete 1/120th share in favour of Sh. Narender, vide relinquishment deed dated 08.10.2021. Thereafter, the registered sale deed dated 18.10.2021 has been executed in favour of the plaintiff.

3. It was further asserted in the suit that the plaintiff was being pressurized by the defendant to transfer the suit property in their name and when he refused to do so, they threatened to forcibly create third party right in the property. Defendant no. 1 told the plaintiff that he shall call some musclemen to grab the suit property and to induct them as tenants making it impossible for the plaintiff to recover the possession of the suit property.

4. Hence, the Respondents/(plaintiffs in the suit) filed the Suit for Permanent Injunction for restraining the defendants from wrongfully dispossessing the plaintiff from the suit property and from raising any construction or creating third party rights in the suit property. The Mandatory Injunction was also sought for directing the defendant and his agents from wrongfully occupying the suit property.

5. The Defendants/Defendants had filed an Application under Order 7



Rule 11 CPC, seeking objection of the Plaintiff, wherein the following grounds:

- i). The suit was not maintainable under Section 185 DLR Act, since as per the submissions made in the plaint itself, the suit property is located in extended Lal Dora area.
- ii). That the aforesaid two properties are in possession of the defendant before the execution of sale deed, which can be proved from the Khatoni of the year 2020-21.
- iii) Therefore, it was asserted that the Suit for Injunction is not maintainable, for which reliance has been placed on ***Padhiyar Prahladji Chenaji vs Maniben Jagmalbhai (Deceased), Civil Appeal No. 1382 of 2022.***

6. Learned counsel for the revisionist has also placed reliance on **(citation to be given by learned counsel)**, wherein it has been held that where the suit property is located in Laldora, it is only the Revenue Court which shall have the jurisdiction to entertain the Injunction Suit. It is, therefore, submitted that the learned Civil Judge fell in error in rejecting the Application under Order VII Rule 11 CPC of the revisionist/defendant.

7. The *first aspect* which emerges from the pleading is that the plaintiff has claimed title in the suit property on the basis of the Sale Deed. It is fairly conceded on behalf of the revisionist that there cannot be a Sale Deed in respect of the property located in Lal Dora. So long as the plaintiff has sought Injunction on the basis of Sale Deed, it cannot be said that the plaintiff cannot file a suit for protection of his possession.

8. The *second aspect* which is being agitated on behalf of the revisionist, is that there was No Objection Certificate given by the co-owner before the



Sale Deed was executed by the two legal heirs of Nand Kishore in favour of Sh. Narender Kumar, who has executed the Sale Deed in favour of the plaintiff.

9. The grounds which are being agitated are essentially touching on the defence/merits of the case, which have rightly not being considered by the learned Trial Court by observing that for determination of the Application under Order VII Rule 11 CPC, only the averments made in the plaint are relevant.

10. Therefore, there is no error or infirmity in the impugned order, which is hereby dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 29, 2024/akc