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

+ C.R.P. 331/2024 & CM APPLs. 66403/2024, 66404/2024,
66405/2024

FAIZ AHMED

.....Petitioner

Through: Mr. F.S. Chauhan, Advocate.

versus

MOHD AFZAL KHAN

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **14.11.2024**

CM APPL. 66406/2024

1. The present Application under *Section 151 of the Code of Civil Procedure, 1908* (hereinafter referred to as "CPC, 1908") has been filed on behalf of the Petitioner seeking condonation of 12 days in re-filing the present Petition.

2. For the reasons and grounds stated in the Application, the Application is allowed. The delay of 12 days in re-filing the Petition is hereby condoned.

3. Accordingly, the Application is disposed of.

C.R.P. 331/2024

4. The present Revision Petition under *Section 115 of CPC, 1908* has been filed on behalf of the Petitioner-Defendant No. 1 against the Order dated 16.07.2024 *vide* which the learned District Judge dismissed the Application under *Order VII Rule 11(a)* read with *Section 151 of CPC, 1908*



filed by the Petitioner-Defendant No. 1 seeking rejection of the Suit of the Respondent-Plaintiff.

5. *Briefly stated*, the Respondent-Plaintiff had filed the *Suit for Possession* in respect of the Flat No. 54, Block No. B, Abul Fazal Cooperative Housing Society Limited, Plot No. 22 at present known as Vasundara Enclave, New Delhi-110096 (*hereinafter referred to as the “suit property”*) and also for *Recovery of Mesne Profits and Injunction* thereof.

6. The Respondent-Plaintiff has explained that Shri Reaz Ahmed, son of Mohd. Rajjab, was the sole owner of the suit property which was allotted to him by the Abul Fazal Cooperative Housing Society Limited (*hereinafter referred to as the “said Society”*) and the Delhi Development Authority (*hereinafter referred to as “DDA”*) vide Letter dated 19.03.1990. He was put in physical possession of the suit property in February, 1995 vide Possession Certificate dated 27.02.1995 issued by the said Society.

7. Shri Reaz Ahmed executed a notarised Will on 06.08.2001 in respect of the suit property in favour of his daughter, Smt. Mehmuda Perveen. On the demise of Shri Reaz Ahmed on 05.01.2003, Smt. Mehmuda Perveen became the sole and absolute owner of the suit property. The other legal heirs of Late Shri Reaz Ahmed executed the registered Relinquishment Deed in favour of Smt. Mehmuda Perveen, on 09.03.2009.

8. Thereafter, she entered into a registered Agreement to Sell dated 12.03.2009 for a total consideration of Rs. 13,25,000/- in favour of the Respondent-Plaintiff. By virtue of the said Agreement to Sell, the Respondent-Plaintiff became the absolute owner of the suit property. Smt. Mehmuda Perveen also executed a registered Will and General Power of Attorney, both dated 12.03.2009, in favour of the Respondent-Plaintiff.



9. She also delivered the possession of the suit property on the execution of the aforesaid documents, on 12.03.2009. Thereafter, the Conveyance Deed also executed in favour of the Respondent-Plaintiff on 17.06.2009 by the DDA which was registered on 17.06.2009 and the suit property stands mutated in the MCD records in the name of the Respondent-Plaintiff. The Respondent-Plaintiff is paying the House Tax of the suit property and the membership of the said Society stands transferred in his name in the record of the said Society. The Plaintiff has been paying dues of the said Society, including security charges and water charges and other dues. The original Electricity connection in the name of Late Shri Reaz Ahmed was disconnected and a new Electricity connection has been installed in the name of the Respondent-Plaintiff at the suit property.

10. The Respondent-Plaintiff has further explained that the Defendant Nos.1 and 2 are the children of Late Shri Imtiaz Ahmed and Defendant No. 3-Smt. Husan Bano, is his widow. Late Shri Imtiaz Ahmed was the younger brother of Late Shri Reaz and he died in an accident in the year 1992. Late Shri Reaz Ahmed on humanitarian grounds, allowed the Defendant No. 3 and her children i.e., the Defendant Nos. 1 and 2 to live in the suit property as Licencees on account of their financial hardship on the request of the Defendant No. 3. Late Shri Reaz Ahmed terminated the licence in the year 2001 and also served a Legal Notice dated 02.08.2001 on Defendant No. 3 which was duly received by her.

11. The Respondent-Plaintiff has further asserted that some goods of the Defendants are lying in the suit property on 12.03.2009, when the suit property was sold to the Respondent-Plaintiff and the possession was delivered to the Respondent-Plaintiff by the previous owner of the suit



property. The defendants promised to remove their goods in a day or two, but they failed to do so; instead they put their locks and illegally occupied the suit property. The Respondent-Plaintiff repeatedly requested the defendants to vacate the suit property and hand over the peaceful and vacant possession, but they have illegally and unauthorizedly occupied the suit property and they are liable to vacate the suit property and also to pay user charges/mesne profits from 12.03.2009 at the market rate for illegally retaining the possession of the suit property. Hence, the Suit was filed on 24.07.2011 for *Recovery of Possession, Mesnse Profits and Injunction* in respect of the suit property.

12. While the Suit has been pending before the learned Trial Court, an Application under *Order VII Rule 11(a)* read with *Section 151 of CPC, 1908* was filed on behalf of the Petitioner-Defendant No. 1, wherein it was alleged that initial consideration for the suit property was paid from the profits of Partnership Firm i.e., M/s Climate Engineering which was the Partnership Firm of Late Shri Imtiaz Ahmed and Late Shri Reaz Ahmed.

13. It is further claimed that there was an oral understanding between Late Shri Reaz Ahmed and the Defendant No. 3 that the suit property was meant for the sole use and benefit of the Defendant No.3. On the basis of this oral understanding, the Defendant No. 3 has been in possession of the suit property since 1995.

14. The Defendants have claimed that they have made payment of sale consideration of the suit property, DDA dues, Electricity Connection, and the Society charges from their own funds and, therefore, they have a right to continue in the suit property on the basis of oral understanding.

15. The ground on which the rejection of the Plaint has been sought by



the Petitioner-Defendant No.1 is that the Respondent-Plaintiff has prayed for a Decree of Possession without claiming a relief of Declaration and Ownership and consequent relief of Possession. The Respondent-Plaintiff has failed to aver that Smt. Mehmuda Perveen ever had exclusive possession of the suit property and has also failed to aver sufficient particulars that any of the defendants were ever dispossessed.

16. In Paragraph-5 of the Plaint, the Cause of Action is conspicuous by its failure to allege not only the fact of any prior possession but also its failure to allege the fact of any dispossession of the Respondent-Plaintiff of the suit property by any of the defendants. The Respondent-Plaintiff has alleged in Paragraph-4 of the Plaint that after the demise of Shri Imtiaz Ahmed in accident in the year 1992, his widow i.e., the Defendant No. 3 along with his children i.e., the Defendant Nos. 1 and 2 have been in possession of the suit property and has admitted the fact that neither the Respondent-Plaintiff nor his predecessor i.e., Smt. Mehmuda Perveen ever had an exclusive possession of the suit property. There is no question of dispossession of the Respondent-Plaintiff or the predecessor from the suit property.

17. It is further averred by the Petitioner-Defendant No. 1 that *Section 110 of the Indian Evidence Act, 1872* provides that the burden of proving that a person is not the owner of anything of which he is shown to be in possession, is on the person who affirms that he is not the owner. In case there is a dispute of title/ownership in issue, then in that event, the Suit for Permanent Injunction without seeking the relief of Declaration regarding the title/ownership, is not maintainable.

18. In the end, it is submitted that in the absence of relief of Declaration of title, the Suit for Possession is liable to be rejected.



19. The Petitioner-Defendant No. 1 has placed reliance on the decisions of the Apex Court in T. Arivandandam vs. T.V. Satyapal and Anr., 1977 SC 2421 and Suraj Lamps & Industries Pvt. Ltd., (2009) 7 SCC 363 and of High Court of Allahabad in Bhagauti Singh @ Chedi Singh vs. Mata Prasad Singh, (2022 LawSuit(All) 2018) in support of his contention.

20. **The Respondent-Plaintiff by way of his Reply** has contended that the Application under *Order VII Rule 11(a)* read with *Section 151 of CPC, 1908* has been filed after almost 13 years of institution of the Suit and is solely intended to delay the proceedings. The Suit discloses the cause of action and is maintainable. The Application under *Order VII Rule 11(a)* read with *Section 151 of CPC, 1908* being a gross abuse of the process of law, deserves to be dismissed with exemplary costs.

21. The Affidavit of evidence had been filed by the Respondent-Plaintiff pursuant to the Order dated 10.07.2019 and the matter was fixed for cross-examination of the Respondent-Plaintiff on 09.10.2019 when the Application under *Order VII Rule 11(a)* read with *Section 151 of CPC, 1908* has been filed to delay the adjudication of the Suit.

22. It is explained that the entire sale consideration was paid by the Respondent-Plaintiff to Smt. Mehmuda Perveen in the sum of Rs. 13,25,000/- and the documents to this effect were also duly executed in his favour by Smt. Mehmuda Perveen. Not only this, the Conveyance Deed and the mutation records have also been carried out in favour of the Respondent-Plaintiff. The Respondent-Plaintiff has relied upon the decision of the Apex Court in Anathula Sudhakar vs. P. Buchi Reddy, AIR 2008 SC 2023 and of this Court in Pooja vs. Narender Kumar Sharma, 245 (2017) Delhi Law Times 240 and Novartis AG & Anr. vs. Zydus Healthcare Limited and Anr.,



297 (2003) Delhi Law Times 299 in support of his assertions.

23. Submissions Heard.

24. From the pleadings, it clearly emerges that the Respondent-Plaintiff has filed the Suit on the basis of the registered Conveyance Deed supported by mutation on his name in the records of the MCD. The Defendant No.3 is trying to set up a title on the basis of an oral understanding between her husband, Late Shri Imtiaz Ahmed and the original Allottee, Late Shri Reaz Ahmed, whereby the Defendant No. 3 herself has conceded that on account of demise of her husband, Late Shri Imtiaz Ahmed in the year 1992, she had been permitted to occupy the suit property in the year 1995. As per Defendant No.3's own submissions, she is a permissive user of the suit property.

25. The Revisionist-Defendant No. 1 has also tried to establish a title by claiming that some of the payments for the purchase of the suit property were originally paid from the Partnership Firm i.e., M/s Climate Engineering which was the Partnership Firm of Late Shri Imtiaz Ahmed and Late Shri Reaz Ahmed. The suit property got allotted in the name of Late Shri Reaz Ahmed. The contention raised by the Revisionist-Defendant No. 1 is also not tenable under the *Benami* Transaction Act, 1988.

26. Pertinently, the Revisionist-Defendant No. 1 himself has referred to *Section 110 of the Indian Evidence Act, 1872* which provides that the burden of proving that a person is not the owner of anything of which he is shown to be in possession, is on the person who affirms that he is not the owner. Here is the case, whereby the Revisionist-Defendant No. 1 is claiming right in the suit property in the nature of ownership. The burden is upon the Petitioner-Defendant No. 1 to establish his right.



27. In the end, it is contended that even if the entire claim of the Petitioner-Defendant No. 1 is accepted, it is nowhere indicated when the Respondent-Plaintiff got the possession and when was he dispossessed. However, it is mentioned in the Plaint that at the time of purchase of the suit property in the year 2009 by the Respondent-Plaintiff, the belongings of the Revisionist-Defendant No. 1 were lying in the suit property, which Defendant No. 3 had agreed to remove the same, but she failed to do so and illegally put the locks on the suit property.

28. It is a settled law which does not need any reiteration, that the ownership of the suit property flowing from valid documents, has a corresponding incidence of legal possession. The averments made in the Plaint *prima facie* show the permissive possession of the Defendant No. 3 and her Children which also got terminated by Late Shri Reaz Ahmed in 2001, who served a Legal Notice dated 02.08.2001 on Defendant No. 3 which was duly received by her.

29. In view of above, it is held that the Plaint discloses the definite cause of action. The learned District Judge has rightly rejected the Application under *Order VII Rule 11(a)* read with *Section 151 of CPC, 1908*.

30. Accordingly, there is no merit in the present Revision Petition which is hereby dismissed along with pending Applications.

NEENA BANSAL KRISHNA, J

NOVEMBER 14, 2024

S.Sharma