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

% **Date of decision: 17th March, 2025**

+ **FAO 84/2023 & CM APPL. 17121/2023**

MANOHAR SINGH

.....Appellant

Through: Mr. S.S. Tripathy, Ms. Bharti
Tripathi, Mr. G.S. Bagga &
Mr. Abhinab Chaudhary,
Advs. with appellant-in-
person.

versus

SAVITA TAYAL & ANR.

.....Respondents

Through: Mr. Satish Dabas, Mr. Naveen
Dalal, Mr. Sandeep Singh
Nainwal, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This is an appeal preferred by the appellant/plaintiff under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], assailing the impugned order dated 27.02.2023 passed by the learned Additional District Judge-02, South, Saket Courts, New Delhi [hereinafter referred to as “trial Court”], whereby his application under Order XXXIX Rules 1 and 2 of the CPC read with Section 151 of the CPC was dismissed for failing the trinity test.

2. Having heard the learned counsel for the parties and upon perusal of the record, and shorn of unnecessary details, the appellant/plaintiff has filed a suit seeking a decree of possession concerning property bearing Plot No. 8 (Old Number), now known as D/144-E (New Number), situated in



Khasra No. 38, in the revenue estate of Neb Saria, New Delhi [hereinafter referred to as the '**suit property**']. The appellant/plaintiff claims to be the recorded owner of the suit property, measuring 205 sq. yards, with his name entered as 'bhoomidar' in the revenue records, including the khata khatauni and khasra girdwari. It is further asserted that respondent No.1 trespassed into the suit property sometime in the year 2016.

3. During the course of arguments, learned counsel for the appellant/plaintiff alluded to the General Power of Attorney dated 19.06.1989, purportedly executed by the appellant/plaintiff in favour of one Mr. Ravi Gupta, residing at A-335, New Friends Colony, New Delhi. It was submitted that respondent No.1 claims to have purchased the suit property from Mr. Ravi Gupta by virtue of an Agreement to Sell, Will, GPA etc. dated 19.06.2001, wherein the address of Mr. Ravi Gupta is mentioned as being in Salem, State of Tamil Nadu.

4. Much emphasis was placed on the fact that the first page of the GPA dated 19.06.1989 is a typed copy, whereas the second page is a computerized copy. It was vehemently contended that the signatures of the appellant/plaintiff on the said document are forged and that the original has not been produced. Additionally, it was pointed out that although the suit property is located in Mehrauli, New Delhi, the said document appears to have been executed in Ghaziabad, State of Uttar Pradesh.

5. Learned counsel for the appellant/plaintiff, alluding to the notification dated 12.12.2007 issued by the GNCTD¹, as well as replies to his RTIs², pointed out that while the suit property was part of land vested

¹ Government of National Capital Territory of Delhi

² Right to Information Act



with *Gaon Sabha*, the government never took possession of it. Consequently, as possession remained with the appellant/plaintiff, he continues to be its rightful owner.

6. *Per contra*, learned counsel for respondent No.1 contended that the appellant/plaintiff has not approached the Court with clean hands, as he has made contradictory claims. Specifically, the assertion that respondent No.1 trespassed into the suit property in 2016 is incorrect, given that the appellant/plaintiff had filed two police complaints prior to that year. These complaints indicate that he was aware of respondent No.1's claim over the property and that she had constructed a room, kitchen, latrine, and bathroom, and was in peaceful possession thereof.

7. It would be expedient to reproduce the relevant observations made by the learned trial Court while disposing of the application under Order XXXIX Rules 1 and 2 of the CPC, that go as under: -

“14. Admittedly the plaintiff had divided the entire properties in various plots. The claim of the defendant no. 1 is that he had purchased the suit premises from Mr. Ravi Gupta in the year 2001 and that said Ravi Gupta had purchased the suit premises from the plaintiff in the year 1988-1989. The plaintiff has not mentioned any particular date or month when he was dispossessed from the suit premises by the defendant no. 1. He has only stated that he was dispossessed somewhere in the year 2016. The defendant no. 1 on the other hand, has specifically stated that she is in possession of the suit property since 19.06.2001. The plaintiff in the plaint has stated that the defendant no. 1 has installed an electricity meter in the suit premises after taking illegal possession in the year 2016. The defendant no. 1, however has filed the copy of an electricity connection shown to be in her name in the suit premises. The date of application for



electricity connection is mentioned in the document as 06.01.2009. The date of demand note is shown as 19.01.2009. The defendant no. 1 has also filed copy of a complaint/application made by her to the Principal Secretary Urban Development, Government of NCT of Delhi on 02.12.2008 seeking an investigation in omitting her name in the relevant columns in application for regularization of the colony and entry of name of Manohar in the said application. Thus it is prima facie shown that the defendant no. 1 is in possession of the suit premises even prior to year 2016. There is an electricity meter also in the suit premises installed in the name of the plaintiff since the year 2009. Therefore, the allegation of the plaintiff that the defendant had forcibly taken possession of the suit premises from him in the year 2016 appears to be not true.

15. There are certain documents which the defendants have claimed to be the documents of ownership of the suit premises. While replying the said allegations in the replication the plaintiff has stated that the alleged GPA in favour of Ravi Gupta has not been executed by him and that it does not bear his signature and thumb impressions. It is matter to be decided in trial whether the said documents is a valid document or a forged and fabricated document. It is also to be decided during trial as to when the plaintiff was dispossessed by the defendant as alleged by him. However, the documents produced by the defendant no. 1 prima facie show that she is in possession of the suit premise since the year 2001. At present, the balance of convenience is not found in favour of the plaintiff. The plaintiff is prima facie shown to be out of the possession of the suit premises since long. Therefore, no irreparable injuries shall be caused to the plaintiff if the relief is not granted.

16. There is one more aspect. The plaintiff has filed the present suit seeking possession of the suit property from the defendant no. 1. the plaintiff however has not sought any declaration of his ownership of the suit property. It is



on record that the defendant is also claiming of the ownership of the suit property on the basis of certain documents. As per the revenue record, the suit property is part of the property vested in Gaon Sabha. Hon'ble High Court of Delhi in order dated 28.11.2016, in Criminal Me no. 250/12 has observed that the complainants (the plaintiff herein is one of the complainant in the said matter) were not even the owners of the property, and the suit property is one of the those property mentioned in the said order. Thus, a cloud has been raised on the ownership of the suit property. Therefore, the plaintiff is also required to seek the declaration of his ownership in the present matter. He has not sought the said relief. Thus, prima facie the present suit is found to be not maintainable in its present form.”

8. On a careful perusal of the aforesaid observations since the respondent No.1 is admittedly in possession of the suit property, this Court finds that the learned trial Court has neither committed any illegality or perversity nor has adopted any incorrect approach in dismissing the application under Order XXXIX Rules 1 and 2 of the CPC, filed on behalf of the appellant/plaintiff.

9. The plea of the learned counsel for the appellant/plaintiff, challenging the learned trial Court's observations that the suit is not maintainable in the present, holds little merit, as the said observations are merely interim in nature.

10. During the course of arguments, it was admitted that issues have already been framed in the main suit and that the case is now at the stage of leading evidence. It goes without saying that the observations made in the impugned order dated 27.02.2023 are not conclusive in nature, and all issues raised by the learned counsel for the appellant/plaintiff shall remain



open for determination after the completion of evidence by both parties.

11. In view of the foregoing discussions, the present appeal is disposed of with the direction that, in the event respondent No.1 decides to sell, alienate, or otherwise dispose of the suit property in the future, she shall inform the concerned Court accordingly.

12. This order is passed without prejudice to the rights and contentions of the parties.

13. The pending application also stands disposed of.

14. A copy of this order be sent to the learned trial Court for information and records.

DHARMESH SHARMA, J.

MARCH 17, 2025 / *Sadiq/SS*