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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 56/2020**

RAJINDER SINGH SALUJAPetitioners

Through: Mr. Sanjiv Bahal, Mr.
Sumit Ahuja, Advs.
alongwith petitioner in
person.

versus

SMT HARVINDER KAUR GANDHI & ORS.

.....Respondents

Through: Mr. Bhagat Singh & Mr.
Prashant Gupta, Advs. for
R-1.
Mr. Vidit Gupta and Mr.
Trivesh Sharma, Advs. for
R-6.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
25.02.2025

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1. The petitioner has challenged the order dated 25.02.2020 (hereafter '**impugned order**'), pursuant to which the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') , was dismissed.
2. The suit was filed by the respondent / plaintiff claiming that her father was the owner of the property bearing No.1/65, Old Rajinder Nagar, New Delhi and that after his death all the legal heirs became absolute owners of the said property in equal shares being 1/7th each. The plaintiff sought a decree of declaration, that the Memorandum of Understanding ('**MOU**') allegedly entered into between defendants, including the petitioner herein, who was arrayed as Defendant No. 1, is null and void.

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3. The plaintiff had also sought a decree of partition and possession in respect of the subject property to the extent of 1/7th share. Certain other prayers were also sought in the suit.

4. The application under Order VII Rule 11 of the CPC was filed by the petitioner stating that the suit was without any cause of action as he had purchased the suit property from persons namely, Smt. Kamlesh Bhatia and Smt. Rohini by virtue of a duly registered Agreement to Sell dated 03.01.1991.

5. Petitioner claimed that the subject property was self acquired and that his self acquired property having been purchased out of his own funds from the previous owners by virtue of various title documents, including Agreement to Sell, Registered General Power of Attorney and the Conveyance Deed 07.02.2005, cannot be subject matter of any alleged claim of the plaintiff.

6. Petitioner also claimed to have demolished the earlier property and constructed a new structure from where he is running a guest house. Plaintiff/respondent has claimed to be the sister of the petitioner and has alleged that the property was owned by the father of the parties. The petitioner, thus, claimed that the property being registered in the name of the petitioner by virtue of registered documents, cannot be subject matter of a suit seeking declaration and is, thus, the suit is without any cause of action.

7. The petitioner also claims that the suit was filed belatedly since the conveyance deed in favour of the petitioner was executed in the year 2005, whereas the suit was filed in the year 2014. The Petitioner has also raised a ground that in the absence of the challenge to the title of the petitioner, no suit could have been maintained.



8. The plaintiff has sought declaration in regard to the MOU dated 25.01.2011 executed between the brothers to the exclusion of the plaintiff/respondent and defendant No.6, pursuant to which the parties confirmed that the subject property belonged to the petitioner.

9. The learned Trial Court dismissed the application noting that the arguments raised by the petitioner are in the nature of the defence which can be considered after the evidence is led between the parties. The learned Trial Court also held that the question of limitation is mixed question of law and facts for which evidence is required.

10. From a bare perusal of the impugned order, it is apparent that the issues as agitated by the petitioner were not addressed. The petitioner had raised a specific plea that in the absence of any challenge to the title of the petitioner, no prayer for declaration can be sought. Further, nothing has been discussed by the learned Trial Court in regard to the issue of limitation.

11. However, it is informed that the suit, at this stage, is listed for final arguments. The recording of evidence has already been concluded.

12. Undisputedly, the application under Order VII Rule 11 of the CPC can be filed at any stage. It, however, cannot be disputed that the purpose of the application is to save the defendant from being subjected to a protracted trial of a suit which itself is not maintainable. The present petition was also filed way back in the year 2020 and for some reason or the other, the same could not be heard. No fault can be attributed on the petitioner for the matter being pending for the last more than four years. Much water, however, has flown since then. The evidence has been led and the matter is now listed for final

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arguments before the learned Trial Court.

13. At this stage, this Court does not consider it apposite to entertain the present petition when admittedly all the arguments as raised in the present petition, can be considered by the learned Trial Court, who also has the benefit of the evidence led by the parties.

14. In view of the above, the present petition is disposed of with liberty to the petitioner to raise all arguments before the learned Trial Court.

15. The learned Trial Court is directed to pass a final order without being influenced by any order that may have been passed by this Court in the present matter.

16. The learned Trial Court is also directed to dispose of the suit expeditiously.

17. The petitioner is at liberty to approach this Court in case any grievance remains in future.

AMIT MAHAJAN, J

FEBRUARY 25, 2025

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