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

+ **RFA 578/2025**

PRADEEP SHARMA

.....Appellant

Through: Mr. Akshit Sachdeva with Mr. Arun
Kumar and Mr. Rohan Sehrawat,
Advocates.

versus

RAJIV GARG

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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04.07.2025

CM APPL. 38535/2025

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

RFA 578/2025

By way of the present regular first appeal filed under section 96 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns judgment and decree dated 25.03.2025 passed by the learned District Judge, Tis Hazari Courts, Delhi in CS DJ No. 613143/2016, whereby the plaint filed by the appellant, seeking declaration, recovery of possession and injunction in relation to property bearing Flat No. 201, J-1/162, Rajouri Garden, New Delhi, has been rejected on an application filed by the respondent under Order VII Rule 11 CPC, on the ground that the relief claimed in the suit is time-barred as also that the plaint does not disclose a valid cause of action.

2. Upon a perusal of the impugned judgment, the following position emerges :



- 2.1. Rights and interests in the suit property are claimed to have been transferred by the appellant in favour of the respondent *vide* a set of documents comprising a general power of attorney, an agreement to sell, affidavit and receipt, all dated 12.07.1999 ('GPA-set of documents'); and by way of the suit, the appellant had sought a declaration that the said set of documents are null-and-void. Arising therefrom, the appellant had also sought permanent injunction restraining the respondent from disturbing his possession of the suit property. In addition, the appellant had also sought a money decree for Rs.10,50,000/- alongwith *pendente-lite* and future interest.
- 2.2. In this backdrop, the learned trial court has observed that this issue already stood concluded *vide* common judgment dated 03.04.2007 passed by a learned Civil Judge, disposing-off two earlier suits filed by the respondent (as plaintiff), the first suit alleging that they had purchased the suit property from the appellant (as defendant) *vide* the GPA-set of documents dated 12.07.1999; and the second suit seeking recovery of possession of the property under section 6 of the Specific Relief Act, 1963 ('Specific Relief Act'). Furthermore, in that earlier judgment, the learned Civil Judge had recorded categorical findings that the respondent had purchased the suit property from the appellant *vide* the GPA-set of documents dated 12.07.1999.
- 2.3. Judgment dated 03.04.2007 passed by the learned Civil Judge was subsequently challenged by the appellant in CRP No.157/2007, which was dismissed by a Co-ordinate Bench of



this court *vide* judgment dated 28.03.2012, thereby upholding the decision made by the learned Civil Judge. It is necessary to note that in the earlier suit before the learned Civil Judge a specific issue had been framed as regards the purchase of the suit property by the respondent, in addition to an issue in relation to the status of possession of the suit property.

- 2.4. The matter worked its way-up to the Supreme Court and *vide* order dated 03.11.2014, the Supreme Court was pleased to dismiss the special leave petition, having first issued notice *vide* order dated 09.05.2012 with the following observations :

“Heard.

No merit. The special leave petitions are dismissed. The amount deposited by the petitioner towards use and occupation of the premises in terms of the order of this Court shall stand released in favour of the respondent-decreeholder.”

3. It is in these circumstances, that the learned trial court observes as follows in impugned judgment dated 25.03.2025:

“19. It is a matter of record that alongwith the other documents, the plaintiff has also filed the judgment dated 03.04.2007 passed by the Ld. Civil Judge while disposing the earlier suits filed by the defendant as plaintiff seeking the relief of permanent injunction and recovery of possession under Section 6 The Specific Relief Act, 1963 with respect to the suit property against the plaintiff of the present suit.

“20. The perusal of the judgment reveals that the following issue was framed and decided by the Ld. Civil Judge while disposing both the aforesaid civil suits :

“Whether the suit property was duly purchased by the plaintiff from the defendant? OPP”.



“21. It be noted that the suit property of the present case was also involved in the aforesaid suits and the defendant herein was the plaintiff of the said suits.

“22. The perusal of the aforesaid judgment reveals that while deciding the aforesaid issue, Ld. Civil Judge gave a categorical finding that the defendant herein had purchased the suit property from the plaintiff of the present suit vide the GPA set of documents in question dated 12.07.1999.

“23. It is a matter of record that the aforesaid finding recorded by Ld. Civil Judge has attained finality as the appeal against the same filed at the instance of the plaintiff of the present case has been dismissed upto the Hon'ble Apex Court and the said fact gets duly established from the order dated 03.11.2014 passed by Hon'ble Apex Court in SLP Civil 14781-14782/2012, Pradeep Sharma Vs. Rajiv Garg, which has been placed on record by the plaintiff himself.

“24. The aforesaid fact makes it clear that there is a finding of a Competent Court, which has attained finality, to the effect that through the GPA set of documents dated 12.07.1999, the plaintiff transferred the suit property in favour of the defendant.

“25. So, the foregoing discussion can be concluded to the effect that the plaintiff cannot seek the declaration of the GPA set of documents dated 12.07.1999 executed by him in favour of the defendant with respect to the suit property as null and void as not only his relief is time barred but there is a finding of a Competent Civil Court also to the effect that through the aforesaid documents, he had transferred the suit property to the defendant and the said finding has attained finality till the Hon'ble Apex Court of this Country.

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“27. Firstly, the plaintiff has sought the declaration of his ownership and consequent recovery of the suit property from the defendant. This Court is of the opinion that in light of the GPA set of documents dated 12.07.1999 executed by the plaintiff in favour of



the defendant, he can neither seek the declaration of his ownership over the suit property nor the consequent recovery of its possession.

* * * * *

“29. Thirdly, the plaintiff has sought the recovery of Rs.10,50,000/- alongwith pendente lite and future interest @ 18% per annum by pleading that the aforesaid amount was unlawfully released to the defendant by Ld. Civil Judge despite fact that he was not the owner of the suit property. However, this Court is of the opinion that the plea of the plaintiff is prima facie meritless as the perusal of the order dated 03.11.2014 passed by Hon’ble Supreme Court in SLP Civil No.14781-14782/2012, Pradeep Sharma Vs. Rajiv Garg, which has been filed by him alongwith the plaint, reveals that the Ld. Trial Court released the amount in question in favour of the defendant as per the directions of Hon’ble Apex Court.

“30. Fourthly, the plaintiff has sought a decree of permanent injunction thereby injuncting the defendant from disturbing his possession over the suit property. However, this Court is of the opinion that the plaintiff cannot seek the said relief as in the first place, he is not in the possession of the suit property and moreover, this Court has already arrived at the finding that he has no right whatsoever to seek the recovery of the possession of the suit property.

“31. Briefly stating, the aforesaid discussion makes it crystal clear that even if this Court goes by the version of the plaintiff and presume the same to be correct and examine it on the touchstone of the settled position of law, there is no valid cause of action in his favour to seek any relief with respect to the suit property against the defendant. Accordingly, the application moved on behalf of defendant under Order VII Rule 11 CPC stands allowed and the plaint of the present suit stands rejected.”

(emphasis supplied)

4. Mr. Akshit Sachdeva, learned counsel appearing for the appellant however argues, that the entire run of proceedings in the earlier civil suit *could not have* addressed the issue of title to the subject property,



since the said suit had been filed by the respondent under section 6 of the Specific Relief Act.

5. Counsel argues that the scope and purport of the suit under section 6 of the Specific Relief Act is *only in relation to a person being dispossessed of an immovable property* otherwise than in due course of law; and that *such suit proceeds notwithstanding the status of title of the property*. In this behalf counsel draws attention to the provisions of section 6 which reads as under :

6. Suit by person dispossessed of immovable property.—(1)

If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

(emphasis supplied)

6. In particular, counsel draws attention to section 6(4) of the Specific Relief Act, to submit that regardless of the outcome of a suit under section 6, the provision itself recites that proceedings under section 6 shall not bar any person from suing to establish *title* to his property and



to recover possession thereof. Counsel therefore submits, that a suit under section 6 could never have related to the title to the property. It is accordingly argued, that notwithstanding the fact that judgment dated 03.04.2007 passed by the learned Civil Judge in the earlier suit has been upheld by a Co-ordinate Bench of this court *vide* judgment dated 28.03.2012 in CRP No. 157/2007; and a special leave petition bearing SLP(C) No. 14781-14782/2012 has been dismissed by the Supreme Court *vide* order dated 03.11.2014, the appellant is yet entitled to maintain the suit that is subject of the present proceedings.

7. It is argued, that in any case, the plaint could not have rejected on an application under Order VII Rule 11 CPC.
8. In support of his submissions, counsel has placed reliance upon a decision of a single judge of the Madras High Court in ***K. Durairaj vs. Ashok Kakri & Anr.***¹, which holds that the legislature did not intend to give the proceedings under section 6(1) of the Specific Relief Act a character of finality; and section 6(4) specifically says that a suit for title and recovery of possession is maintainable regardless of the outcome of a suit under section 6(1). Counsel argues, that the Madras High Court has held that even if a suit under section 6 leads a court to give a decision on the question of title, that decision does not operate as *res-judicata* in a subsequent suit whereby a person claims title to the suit property.

¹ 2010 SCC OnLine Mad 589



9. Counsel also relies upon a decision of the Supreme Court in ***ITC Limited vs. Adarsh Cooperative Housing Society Limited***² in which the Supreme Court has held that the proceedings under section 6 partake the character of a summary proceedings, against which any appeal or review has been specifically barred; and that the remedy for an unsuccessful litigant is to file a fresh suit for recovery of possession *on the basis of title*.
10. Upon a careful consideration of the record, as well as appreciating the arguments made on behalf of the appellant, this court regrets that it is unable to agree with those submissions for the following reasons :
- 10.1. *Firstly*, there is no basis to limiting the scope of common judgment dated 03.04.2007 only to the suit filed under section 6 of the Specific Relief Act since the learned Civil Judge had disposed-of two suits, one of which was under section 6 of the Specific Relief Act but the other suit was in relation to the title of the suit property. The other suit related to whether the title to the suit property had been conveyed to the respondent by the appellant. In this regard a specific issue, being the very first issue was framed in that suit as quoted in para 3 above; and a finding in favour of the respondent was given by the learned Civil Judge on that issue. That issue therefore stands decided against the appellant after a full-dressed trial, which finding has attained finality having worked its way-up through the Co-ordinate Bench of this court in CRP No. 157/2007 *vide* order dated

² (2013) 10 SCC 169



28.03.2012, to the Supreme Court, which was pleased to dismiss the SLP on merits *vide* order dated 03.11.2014, observing that it found no merit in the special leave petition.

10.2. *Secondly*, the appellant was a party to the earlier suits and it was therefore available to the appellant to raise all his grievances that are now being canvassed, including the defence that the scope of a suit under section 6 is limited, before the learned Civil Judge in the earlier suit.

10.3. *Thirdly*, it is observed that even if *one of* the earlier suits was, or ought to have been, limited to the question of possession without having to do anything with the title to the suit property, the other suit related specifically to the purchase of the suit property and both the suits were disposed-of *vide* common judgment dated 03.04.2007, the appellant became aware that there was a challenge to his title at the hands of the respondent; and therefore the appellant ought to have filed the suit claiming a declaration as to his title under section 6(4) of the Special Relief Act *within the period of limitation prescribed under Article 58 or Article 59 of the Limitation Act 1973*, which provides a limitation period of 03 years from the time *when the right to sue first accrues or when the facts entitling him to sue first became known to him*. This however, was not done by the appellant, who now argues that the right to sue first accrued to him only when the judgment of the learned Civil Judge dated 03.04.2007 attained finality by the Supreme Court dismissing the SLP on 03.11.2014, whereafter the appellant has filed the present suit on 12.03.2015.



In the opinion of this court, the eventual dismissal of the SLP by the Supreme Court cannot be the point in time when the right to sue *first accrued* in favour of the appellant, since the learned Civil Judge had returned a clear finding against the appellant's title to the suit property. The learned trial court was accordingly correct in observing that the claim in the suit was also time-barred.

11. Upon a conspectus of the foregoing, this court finds no merit in the present appeal, which is accordingly dismissed at the stage of issuance of notice itself.
12. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 4, 2025
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