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

% ***Pronounced on: 27th January, 2025***

+ **C.R.P. 370/2024 & CM APPL. 71719/2024**
(for interim relief)

JITENDER SINGH

S/o Late Sh. Harpal Singh Tomar

R/o 582, Sector-III

R.K. Puram,

New Delhi-110022

.....Petitioner

Through: Mr. Rizwan, Mr. Azadar Husain, Ms.
Nistha Sinha, Ms. Sachi Chopra &
Mr. Samarth Sharma, Advocates.

versus

1. YOGESHWAR SINGH TOMAR

S/o Late Sh. Harpal Singh Tomar

R/o A-145, Shri Sai Kunj

Sector D-2, Near Bhawani Kunj

Vasant Kunj, New Delhi-110070

E-mail Id: msgandhico@gmail.com

....Respondent No.1

2. M/S BLUE SKY ESTATE PVT. LTD.

B-66, First Floor

Defence Colony

New Delhi-110024

E-mail Id: ssbedi123@gmail.com

Also at:

1, Oak Drive

Oak Lane, D.L.F. Farms

Village Chhattarpur

New Delhi-110074

...Respondent No. 2

3. SH. OMPAL SINGH

S/o Sh. Mittar Singh



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R/o 1, Oak Drive
Oak Lane, D.L.F. Farms
Village Chhatarpur
New Delhi-110074
E-mail: ssbedi123@gmail.com

...Respondent No.3

Through: Mr. Vishal Bhatnagar, Mr. Vineet Gandhi, Ms. R. Khunger & Ms. Rani Yadav, Advocates for R-1. Mr. Vipin Kumar Saini, Advocate for R-2 & 3 through VC.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. The Revision Petition under *Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC')* has been filed, to set-aside the Order dated 24.03.2023 *vide which the Application under Order VII Rule 11 CPC, filed on behalf of the Petitioner, Mr. Jitender Singh (Defendant No. 2), has been dismissed.*
2. The Plaintiff, Mr. Yogeshwar Singh Tomar/Respondent No. 1, had filed a Suit for Specific Performance of an Agreement to Sell in respect of the Property bearing No. 64 situated at Village Chhatarpur (*also known as Chhatarpur Extension, Hauz Khas*), New Delhi admeasuring 271 sq. yds (*hereinafter referred to as 'Suit Property'*) and a total sum of Rs.14,09,200/- was paid against the Receipts, out of which one Receipt No. 82 is dated 22.01.2004 and Receipt No. 93 is dated 01.02.2004.



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3. The Plaintiff had applied for requisite permission for sale of the piece of land from its employer but could get permission only in respect of 90 sq. yds and Sale Deed dated 08.04.2004 was executed between the Plaintiff and the Defendant No. 1, through its Attorney, which was duly registered in the Office of Sub-Registrar-V, New Delhi.

4. The Plaintiff and the Defendant No. 1 agreed that for the remaining plot of 181 sq. yds., a proper Sale Deed shall be executed as and when the Plaintiff is able to obtain the requisite permission from its employer or at any time, as per the convenience of the Plaintiff and the possession of the same shall also be handed over to the Plaintiff. Further, Defendant No. 1 assured that the amount as given by him to purchase the entire land ad measuring 271 sq. yds, shall remain in his safe custody after deducting the value of sold plot of 90 sq. yds. At that time, one of the three receipts was destroyed by Defendant No. 1 while the remaining two receipts remained in possession of the Plaintiff. The total consideration in the Sale Deed dated 08.04.2004 was shown as Rs.50,000/- instead of Rs.4,68,000/- on the persuasion of Defendant No. 1, for the reason that the sold out portion of 90 sq. yds was not demarcated.

5. The Plaintiff claimed that on account of his pre-occupation and that he was under transfer to various locations in India, he could not obtain the requisite permission from his employer, which he was able to get ultimately in the year 2013. Thereafter, he made several visits to the Office of Defendant No. 1/its General Attorney, Mr. Ompal Singh but they avoided the Plaintiff, without any reason. The last visit was made by the Plaintiff to the Office of Defendant No.1 on 07.10.2014. Thereafter, the Plaintiff issued



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a Legal Notice dated 17.10.2014, to Defendant No. 1 and its Attorney, Mr. Ompal Singh, complaining about the lackadaisical attitude in executing the Sale Deed for the remaining portion of 181 sq. yds and calling upon them to execute the Sale Deed within 30 days.

6. A Reply dated 15.11.2014 was sent by Defendant No. 1, through its Attorney alleging that the '*No Objection Certificate*' was applied for at least five times, but did not mention the exact dates. It was further informed that the Suit Property has already been sold to Mr. Jitender Singh (Defendant No. 2)/Petitioner, who is the younger brother of the Plaintiff. The receipt of Rs. 14,09,200/- was not disputed by the Defendant No. 1 to have been received from the Plaintiff as the settled sale consideration in respect of the entire plot ad measuring 271 sq. yds. It was also silent about refunding the excess payment to the Plaintiff.

7. The Plaintiff/Respondent No.1 thus, approached his brother/Defendant No. 2/Revisionist, for execution of the Sale Deed in his favour but the Revisionist/Defendant No. 2 failed to give any positive Reply. On further enquiry, he was able to obtain the certified copy of the Sale Deed dated 18.01.2005 only on or about 20.12.2014, which reflected that the suit property was already sold to Defendant No.2/Revisionist vide said Sale Deed.

8. It is claimed that the Defendant No. 1 has failed to perform his part of the Contract by executing the Sale Deed in favour of the Defendant No. 2/Revisionist/Jitender Singh. Hence, *the Suit was filed for Specific Performance and for Damages for Use and Occupation of the Suit Property*



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@15,000/- p.m. and for injuncting the Defendants from creating third party interest in the Suit Property.

9. An Application under Order VII Rule 11 CPC was filed on behalf of the Defendant No. 2/Revisionist wherein it was contended that as per the averments contained in the Plaint, pursuant to the Agreement to Sell, the entire sale consideration was paid in January/February, 2004 but the Suit has been filed only on 07.09.2017, which is *hopelessly barred by limitation*.

10. The learned ADJ observed that while considering the Application under Order VII Rule 11 CPC, only the averments made in the Plaint, are to be considered. The Plaintiff had specifically averred that as per the terms of the Agreement, the Sale Deed in respect of 181 sq. yds of land was to be executed as and when the Plaintiff was able to obtain permission from his employer, which he got only in 2013. Immediately, thereafter he contacted the Defendant No. 1, who was not forthcoming and in reply to the legal Notice dated 17.10.2014, disclosed that the property already stands sold to the Defendant No. 2, Mr. Jitender Singh/Revisionist.

11. The learned Trial Court observed that the cause of action has to be determined on the basis of the averments made in the Plaint wherein it has been stated that the cause of action arose on 17.11.2014 when the Plaintiff received a Reply dated 15.11.2014 and further on 20.12.2014, when he was able to obtain the Sale Deed dated 18.01.2005, executed in favour of Defendant NO.2/Petitioner. *It was, therefore, held that from the averments made in the Plaint, the Suit was well within the period of limitation. Consequently, the Application under Order VII Rule 11 CPC was rejected.*



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12. Aggrieved by the said dismissal of the Application under Order VII Rule 11 CPC, the Defendant No. 2/Revisionist has filed the present Revision Petition, to challenge the impugned award on the ground that the present Suit has been filed after more than 12 years of execution of Sale Deed in 2005 in his favour, in which the Plaintiff himself had signed the Application for getting '*No Objection Certificate*', which is a necessity for the Sale Deed. *There is no cause of action in the entire Complaint and the Suit is hopelessly barred by limitation.*

13. Furthermore, the *Suit is barred under Section 16(c) and Section 20 of the Specific Relief Act, 1963 as there was no Agreement between the Plaintiff and the Defendant No. 1 of which the performance could be sought.*

14. There is *no privity of contract* between the Plaintiff and the Revisionist except the fact that the Plaintiff along with the Defendant No. 2 and their third brother, Mr. Dhirender Singh Tomar, had jointly approached the Respondent No.3, Mr. Ompal Singh, the General Attorney of the Defendant No. 1, for purchasing the property in question admeasuring 271 sq. yds. Jointly. The sale in respect of the 1/3rd portion has already been executed in the name of the Plaintiff and nothing further remains to be executed. The Sale Deed in respect of remaining portion got executed in his favour way back on 18.01.2005. There was no privity of contract between Plaintiff, his brother and Defendant No. 2.

15. Reliance has been placed on *Dahiben v. Arvindbhai Kalyanji Bhansuali (Gajra) dead through legal representatives and others*, AIR OnLine 2020 SC 634, wherein it has been held that *if on the meaningful reading of the Complaint, it is found to be manifestly vexatious or without any*



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merit, and does not disclose any right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC, and Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust, (2012) 8 SCC 706.

16. It is, therefore, submitted that the impugned Order is liable to be set-aside and the Suit be dismissed.

17. **Submissions heard and the record perused.**

18. The Plaintiff/Respondent No. 1 had specifically averred that the Agreement to Sell was entered jointly by him along with his brothers, Defendant No. 1 and the Defendant No. 3 through his Attorney, for purchase of entire property in question admeasuring 271 sq.yds, for which the entire sale consideration of Rs. 14,09,200/- was admittedly paid. He further asserted that because permission for execution of the Sale Deed could be obtained only in respect of 91 sq. yds., the Sale Deed dated 08.04.2004, was executed in his favour for 91 sq. yds. The remaining Sale Deed could not be executed as the requisite permission could not be obtained. It is only in 2014 when he approached the Defendant, for execution of the Sale Deed that he came to know that the Sale Deed in respect of 181 sq. yds. has already been executed on 18.01.2005, in favour of the Revisionist.

19. In the *Cause of Action Paragraph*, it has been specifically detailed that he came to know about the alleged Sale Deed in favour of the Revisionist, from the Reply of the Defendant No. 1, dated 17.11.2014 and subsequently, he was able to confirm this fact when he obtained the Sale Deed dated 08.04.2005, on 20.12.2014. According to the Plaintiff, the



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Cause of Action arose in November, 2014 and the present Suit has been filed on 07.09.2017, i.e. within the period of three years.

20. It is the defence of Defendant No. 2, as disclosed in the Written Statement, that the Plaintiff, he and their third brother, had jointly approached the Defendant No. 1, for the purchase of the suit property. The Sale Deed in respect of his 1/3rd share already got executed. For the further remaining 2/3rd portion, the Sale Deed was executed in 2005 itself in favour of the Defendant No.2/Revisionist, about which he was aware as he had signed the *No Objection Certificate*.

21. Whether there was *in fact* an Agreement for Sale of entire plot in favour of the Plaintiff or whether it was purchased jointly by three brothers, are all disputed facts and defence of the Defendants, which need to be tested on the anvil of evidence. This defence cannot be considered at the stage of rejection of the Plaint under Order VII Rule 11 CPC.

22. As has been rightly observed by the learned ADJ that for considering an Application under Order VII Rule 11 CPC, only the averments made in the Plaint, need to be considered. According to the Cause of Action Paragraph, the Cause of Action has arisen only in November, 2014. Consequently, the Suit filed on 07.09.2017, is within the limitation.

Conclusion:-

23. There is no merit in the present Revision Petition, which is hereby dismissed.

24. The Revision Petition is disposed of accordingly along with the pending Application(s).



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(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 27, 2025/RS