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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 541/2024 & CM APPL. 48301/2024 and CM APPL. 48302/2024**
SH. RAGHUBIR SINGH (DECEASED) THROUGH HIS LRS SMT. MADHUBALA CHOWDHARY & ORS.Appellants

Through: Mr. Sanjay Mahi Tripathi, Adv. with
Mr. Suraj Kumar Singh and Mr.
Kamal Kant Tripathy, Advs.

versus

SH. P.C. MOHANRespondent
Through: Mr. Nitesh Kumar Singh, Adv. with
Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Advs.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER
22.08.2024

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1. The present Appeal has been filed impugning a Judgment dated 04.05.2024 passed by the learned Trial Court [hereinafter referred to as "Impugned Judgment"]. By the Impugned Judgment, the suit for declaration, termination and mandatory injunction as filed by the Appellants/Plaintiffs against the Respondent/Defendant has been dismissed. The learned Trial Court has found that the suit filed by the Appellants/Plaintiffs in the year 2005 is barred by limitation.
2. At the outset, the learned Counsel for the Appellants submits that the decree sheet has not been filed by him. He seeks and is granted two weeks' time to file the decree sheet before this Court.



3. Learned Counsel for the Appellants/Plaintiffs submits that the Impugned Judgment suffers from infirmity. He submits that in terms of Article 58 of Schedule 1 of the Limitation Act, 1963 the cause of action to obtain a declaration arises within three years when the right to sue first accrues. He further submits that the right to sue accrued in the year 2005.

4. Learned Counsel for the Appellants/Plaintiffs seeks to rely upon the examination of the Respondent/defendant dated 20.04.2017 in this regard. The relevant extract of the cross-examination is reproduced below:

“It is correct that I filed a suit for possession, cancellation of documents viz agreement to sell dt. 18.06.1998, receipt dt. 18.06.1998 & affidavit against late plaintiff vide Suit No. 744/09 titled as P.C. Mohan Vs. Raghuvir Singh. It is further correct that the suit said was dismissed on 23.03.2010. It is also correct that I have not preferred against the said dismissal of the suit. It was filed in the year 1999.”

5. A perusal of the cross-examination shows that the Respondent/Defendant had preferred a suit for possession, the cancellation of the documents executed in favour of the Appellants/Plaintiffs before this Court which was filed in the year 1999. The suit was dismissed on 23.03.2010.

6. Learned Counsel for the Appellants/Plaintiffs further submits that the threat of dispossession as referred to in Article 58 of the Act means a threat from actual dispossession and not the filing of a suit which occurred in the year 1999. He seeks to place on record judgments in support of his contentions.

6.1 Learned Counsel for the parties seek and are granted time to file a short-note, not exceeding two pages, along with the compilation of judgments, if any, relied upon at least three days before the next date of hearing.



6.2 All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

7. List on 09.09.2024 in the Supplementary list.

TARA VITASTA GANJU, J

AUGUST 22, 2024/SA

Click here to check corrigendum, if any