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

+ **CS(OS) 2536/2013**

SATINDER SINGH & ORS

..... Plaintiff

Through: None

versus

RAJINDER KUMAR & ORS

..... Defendant

Through: Mr. Dhruv Grover Advocate for LR's
of D-1
Mr. Jitender Chaudhary & Ms. Shilpa
Chohan Advocates for D-2
Mr. Suresh Dobhal & Mr. Saaransh
Parashar Advocates for D-3

CORAM:

**SH. RAKESH PANDIT (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

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24.04.2019

To come up for orders today at 04:00 pm.

**SH. RAKESH PANDIT (DHJS)
JOINT REGISTRAR (JUDICIAL)**

APRIL 24, 2019

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Present : None at 04:00 pm

IA No. 11089/2018(under Order 6 Rule 17 CPC by plaintiff)

1. By way of this order, I shall dispose of the present application filed by the plaintiffs seeking amendment in the plaint.
2. The brief facts of the case necessary to dispose of the present



application are that the plaintiffs filed the present suit for specific performance, seeking enforcement of contract of sale of property bearing No. S-257, Greater Kailash, Part-II, New Delhi, admeasuring 207 square yards (hereinafter referred to as the suit property). It is stated by the plaintiffs that the suit property was owned by defendants 1 and 2 (now defendant no.1 had expired during the pendency of the present matter and legal heirs of deceased defendant no.1 are on record).

3. It stated that the suit property was mortgaged with defendant no.3. It is stated by the plaintiffs that defendants 1 and 2 had assured to get the mortgage discharged. The plaintiffs had paid the defendants a sum of Rs. 1.80 Crores as mentioned in para-7 of the plaint as part consideration. It is also stated that some proceedings were also going on in DRT-I, Delhi filed by defendants 1 and 2 against defendant no.3 (as mentioned in para-18 of the pliant).

4. In the prayer clause the plaintiffs had sought the specific performance of the contract against defendants 1 and 2. They have also sought a prayer seeking directions from the court that defendants 1 and 2 be directed to pay the amount to defendant no.3 to get the mortgage discharged. A prayer for permanent injunction was also sought.



5. Defendant no.3 has filed the written statement stating the plaintiffs and defendants 1 and 2 had connived with each other to defraud the defendant no.3 of its rightful claim to recover the amount and they want to somehow maintain illegal right over the suit property. It is further stated that the alleged contract is a fraudulent transaction.

6. No written statement has been filed to the original plaint by the legal heirs of deceased defendant no.1 or by the defendant no.2.

7. By way of this application, it is submitted by the plaintiffs that defendant no.3 had succeeded to obtain the recovery certificate regarding the loan/mortgage against property and other defendants. It is stated that now plaintiffs could not get the suit property and due to that reason, they be allowed to amend the plaint seeking compensation of Rs. 50 lacs in addition to it the refund of Rs.2 Crores, as mentioned in paragraphs 12 and 13 of this application.

8. Legal heirs of deceased defendant no.1 had filed the reply stating that these legal heirs have no right to pay the debt of deceased defendant no.1. Defendant no.2 had also filed the reply stating the plaintiffs are trying to change the nature of the suit. It is further stated that the alleged relief claimed by the plaintiffs through this amendment is barred by limitation and



due to this reason, the amendment cannot be allowed.

9. The plaintiffs had filed the rejoinder to the reply of legal heirs of defendant no. 1. They reiterated and reaffirmed the facts of application and denied those of reply filed by legal heirs of deceased defendant no.1.

10. I have gone through the record and the submissions forwarded by learned counsels for the parties.

11. From the perusal of the record, it appears that at the time of filing of the present suit, the plaintiffs were within their rights seeking damages/compensation.

12. As far as the refund of money is concerned, it is argued by learned counsel for the plaintiffs that this right accrued to the plaintiffs only when defendant no.3 had obtained the recovery certificate from DRT. It is stated that due to this reason, the same is not time barred. As far as this plea is taken, the same is not tenable. From the very beginning, the plaintiffs were aware that there was a mortgage over the property and defendant no.3 can recover its money.

13. As far as Limitation Act is concerned, the specific performance of contract or recovery of money through a contract can be done within three years from the refusal on the part of other party. By way of this application,



the plaintiffs want to overcome this bar of limitation, which cannot be done.

14. In these circumstances, the application cannot be allowed as the relief sought in proposed amendment is time barred, and is thus dismissed.

15. From the perusal of record it appears that proceedings of admission/denial of documents are already done. So the matter be placed before the Hon'ble Court for further directions on 02.05.2019.

SH. RAKESH PANDIT (DHJS)
JOINT REGISTRAR (JUDICIAL)

APRIL 24, 2019

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