

**CS NO. 15291/08  
RAKESH V. BHOLE**

**18.01.2019**

**At 4.00 PM**

**Present:** None.

1. The present order shall decide application of defendant no. 12 u/Rule 11 of Order VII CPC submitting that plaintiff has pleaded in para no. 26 of the plaint that vide acquisition proceedings the agreement to sell dated 03.08.1988 has become impossible to perform without any fault of the plaintiff. The relief plaintiff claims is specific performance of contract of agreement to sell dated 03.08.1988 and execution of deeds of sale in respect of Khasra no. 4066/2316/1601 (2-13) and No. 2522/1657 (3-14). It is submitted that the above two prayers are contradictory and admittedly the contract has become impossible to perform and therefore the same is liable to be dismissed.

1.1 In reply to the same the Id. Counsel for plaintiff has submitted that the alleged agreement to sell was executed between father of defendant no. 12 who is legal heir and therefore cannot be questioned by defendant no. 12 being LR. It is submitted that there are three Khasra numbers. One of the Khasra number is 4098/1678 (63-01). It is submitted that only Khasra no. 4098 has been acquired out of three Khasras and

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therefore only in respect of such Khasra the specific performance of contract could have become impossible to perform and not in respect of other Khasras.

1.2 After hearing both the parties the submission of Id. Counsel for respondent/plaintiff are upheld that even when one of the Khasra is acquired then specific performance of contract and relief thereof can be claimed by the plaintiff in respect of other Khasra numbers and on that ground alone the entire suit is not liable to be dismissed u/R. 11 of Order VII CPC. Further, the Id. Counsel for plaintiff has submitted that he has already paid the entire amount for a sum of Rs.17 lakhs of purchase of the three Khasras. It was total sale consideration.

2. Ld. Counsel for the applicant/defendant no. 12 has submitted that the plaintiff has failed to mention division of total amount of compensation of Rs.1,03,16,062/- that how much of it is for compensation and on what head and how much of it is for interest.

2.1 The plaintiff/respondent has submitted that the sum of Rs.1,03,16,062/- is claimed by way of compensation is the amount which awarded on acquisition of Khasra no. 4098 by Govt. of NCT of Delhi. This is due to the fact that only the plaintiff is entitled to such compensation having already paid the

entire consideration for the said land to father of defendant no.

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12 who is thereby not entitled to it. It is submitted by the Id. Counsel for respondent that the amount awarded in the land acquisition proceeding is claimed by the plaintiff/respondent with pendentelite and future interest @ 18% p.a.

2.2 After considering submission of both the parties it is noted that the suit cannot be dismissed on the ground as pleaded by the applicant u/R. 11 of Order VII CPC as sufficient differentiation is created by the plaintiff between the amount of compensation and interest claimed. Further, deficiency in pleading alone in claiming part relief insufficiently (though not held so) does not make the above prayer come within the provision referred by the applicant. Hence the above ground of the applicant is rejected.

3. Another ground taken by the applicant is that the deficient Court fees are filed and the demand for compensation is barred by time even when the same are allowed by the amendment.

3.1 It is noted that the deficiency of Court fees is not determined in the present matter which is disputed by the respondent and the applicant both. In fact what is claimed by the plaintiff/respondent is his entitlement to the compensation under Land Acquisition Act of the acquired land to which he is

allegedly entitled in view of agreement to sell dated 03.08.1988

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having already paid the total sale consideration on the said land. Hence the determination of the Court fees in the present case is mixed question of law and fact to which parties are at liberty to raise issue and on this ground alone the suit of the plaintiff is not liable to be rejected u/R. 11 of Order VII CPC.

4. The application of defendant no. 12 is dismissed with cost of Rs.3,000/- to be paid to the Id. Counsel for plaintiff on the next date keeping in view the fact that the matter is quite old pertaining to the year 1994 and the application u/R. 11 of Order VII CPC needs to be moved at the first instance.

Put up for admission/denial of documents and framing of issues on **02.02.2019**. Parties are at liberty to file proposed issues atleast 03 days before the NDOH.

**(JOGINDER P. NAHAR)**  
**ADJ-04/CENTRAL/THC**  
**DELHI/18.01.2019**