

IN THE COURT OF SH. SOMITRA KUMAR DISTRICT JUDGE
– 06, (EAST DISTRICT) KARKARDOOMA COURTS, DELHI

CS NO. 1264/2016

IN THE MATTER OF :-

MOHD. AFZAL KHAN

..... Plaintiff

Vs.

FAIZ AHMED @ FAZI & ORS.

.... Defendants

ORDER
16.07.2024

1. This order shall decide the application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter “CPC”) read with section 151 CPC on behalf of defendant no.1 praying for rejection of the plaint for failing to disclose any cause of action.

2. The present suit is a suit for possession of flat no. 54, Block No. B, Abul Fazal Co-operative Housing Society Ltd., Plot no.22 at present known as Vasundara Enclave, New Delhi-110096 (hereinafter referred to as ‘the suit property’), recovery of mesne profits and injunction in respect of the suit property.

3. Brief facts as averred in the plaint are that Sh. Reaz Ahmed, s/o Sh. Mohd. Rajjab was the sole owner of the property. The suit property was allotted to him by the Abul Fazal Co-operative Housing Society Ltd. (hereinafter referred to as ‘the society’) & Delhi Development Authority (hereinafter referred to as “D.D.A.”) vide letter dated 19.03.1990 and he was put in physical vacant possession of the suit property in February, 1995 vide issuance of possession certificate dated 27.02.1995 issued

by the Society; that Sh. Reaz Ahmad executed a notarized Will on 06.08.2001 in respect of the suit property in favour of his daughter Smt. Mehmuda Perveen in good disposing mind in the presence of two attesting witnesses; that on the death of Sh. Reaz Ahmed on 05.01.2003, Smt. Mehmuda Parveen became the absolute and sole owner of the suit property as per the aforesaid Will; that other legal heirs of Sh. Reaz Ahmed also executed a registered relinquishment deed in favour of Smt. Mehmuda Parveen on 09.03.2009 which is registered with Sub-Registrar-VIII, Delhi vide registration no. 2217, in additional book no. 4, Vol. 3007 on pages no. 131 to 136 dated 12.03.2009; that Smt. Mehmuda Parveen entered into a registered agreement to sale dated 12.03.2009 with the plaintiff in respect of the suit property for a total consideration of Rs. 13,25,000/- (Rupees Thirteen lacs and twenty five thousand only) duly registered vide registration no. 2629 on 12.03.2009 by the Sub-Registrar, Delhi/New Delhi; that in view of the aforesaid agreement for sale dated 12.03.2009, the plaintiff became the absolute owner of the suit property; that Smt. Mehmuda Parveen also executed a Will dated 12.03.2009 and General Power of Attorney dated 12.03.2009 duly registered by Sub-Registrar, VIII, Delhi as document no. 983, in additional book no. 3, Vol. 899 on pages no. 152 to 153 on 12.03.2009 and as document no. 2217, in additional book no. 4, Vol.3007 on pages 131 to 136 on 12.03.2009, respectively; that Smt. Mehmuda Parveen also delivered the possession of the suit property to the plaintiff; that Smt. Mehmuda was not left with any interest, right or title in the suit property on the execution of

the aforesaid documents on 12.03.2009 and the plaintiff became the owner of the suit property; that a conveyance deed was also executed in respect of the suit property in favour of the plaintiff on 17.06.2009 by DDA and the same was registered with the Sub-Registrar-VIII/Delhi/New Delhi vide registration no. 8727 in addl book no.1, Vol. 3404, on pages 143 to 144 dated 17.06.2009; that the suit property has been mutated by the MCD in the name of the plaintiff and the plaintiff is paying the house tax of the said property; that the membership of the society stands transferred in the name of the plaintiff in the record of the Society; that the plaintiff is paying dues of the society including security charges and water charges and other dues; that original electricity connection in the name of late Sh. Reaz Ahmed was disconnected and a new electricity connection was installed in the name of the plaintiff at the suit property.

4. It is further averred by the plaintiff in the plaint that defendants have absolutely no right, title or interest in the suit property; that defendants no. 1 and 2 are children of late Sh. Imtiaz Ahmed and defendant no.3 is his widow; that Sh. Imtiaz Ahmed was the younger of Sh. Reaz Ahmed and he died in an accident in the year 1992; that late Reaz Ahmed on humanitarian grounds allowed defendant no.3 and her children i.e. defendant no. 1 and 2 to live in the suit property as licensees on account of their financial hardship at the request of defendant no.3; that Sh. Reaz Ahmed terminated the licence in the year 2001 and also served a legal notice dated 02.08.2001 on defendant no.3 which was duly received by her; that some goods of the defendants

were lying in the suit property on 12.03.2009, when the suit property was sold to the plaintiff and possession delivered to the plaintiff by previous owner of the suit property; that defendants promised to remove their goods in a day or two but they failed to do so and instead put their locks over the suit property and illegally occupied the same; that plaintiff repeatedly requested the defendants to vacate the suit property and hand over the vacant and peaceful possession of the suit property to the plaintiff, however, the defendants continued to illegally and unauthorizedly occupy the suit property; that defendants are liable to vacate the suit property and hand over the vacant possession of the suit property and defendants are also liable to pay user charges, mesne profit from 12.03.2009 at the market rate for illegally retaining the possession of the suit property. Hence, the present suit was filed on 24.07.2011 praying for recovery of possession, mesne profit and injunction in respect of the suit property.

5. Although for deciding an application under Order 7 Rule 11 of CPC only averment in the plaint needs to be considered, however, it is pertinent to refer to the contention of the defendant as raised in written statement. The defendants contended in their written statement that the initial consideration for the suit property was paid from the profits of partnership firm M/s Climate Engineering, which was a partnership firm between Late Sh. Imtiaz Ahmed and Late Sh. Reaz Ahmed and that there was an oral understanding between the Late Sh. Reaz Ahmed and Defendant no. 3 that the suit

property was meant for the sole use and benefit of defendant no. 3, and in view of the said oral understanding and after being put in possession of the suit property in the year 1995, defendants had made a payment towards sale consideration of the suit property, DDA dues, electricity connection, and society charges from her own funds and therefore, the defendants have a right, to the suit property on the basis of oral understanding.

6. The instant application under Order VII Rule 11(a) r/w Section 151 CPC was filed 04.01.2023 on behalf of defendant no.1 praying for rejection of the plaint. It is submitted by defendant no. 1 that the plaintiff has prayed for the decree of possession as distinct from the relief of declaration and consequent relief of possession; that though the plaintiff averred in the plaint alleged conveyance of title of the suit property from one Smt. Mehmuda Perveen to the Plaintiff, however, the plaintiff not only failed to aver that Smt. Mehmuda Perveen ever had the exclusive possession of the suit premises but also failed to aver with any sufficient particulars that any of the Defendants ever dispossessed him; that para 5 of the plaint pleading the 'Cause of Action', is conspicuous by its failure to allege not only the fact of any prior possession but also its failure to allege the fact of any dispossession of the plaintiff of the suit property by any of the Defendants; that the plaintiff himself has alleged under para no. 4 of the plaint that after the death of Shri Imtiaz Ahmed in an accident in the year 1992 till date, his widow i.e. defendant No. 3 and his children i.e. defendant No 1 and 2 have been in possession of the suit property and thereby has admitted the fact

that neither the Plaintiff nor his predecessor namely Smt. Mehmuda Perveen ever had any exclusive possession of the suit property and accordingly, there is no question of dispossession of the Plaintiff or his predecessor from the suit property.

7. It is further stated in the instant application that as per Section 110 of the Indian Evidence Act, 1872, the burden of proving that a person is not the owner of anything of which he is shown to be in possession is on the person who affirms that he is not the owner; that it is settled principle of law if the dispute of title/ownership is in issue then in that event the suit for a permanent injunction without seeking relief of declaration regarding title/ownership would not be maintainable; it is finally submitted that the in absence of relief of declaration of title over the suit property, the plaintiff has no cause of action and has no right to sue for possession of the suit property. The defendant relied on the judgement of the Hon'ble Supreme Court in **T. Arivandandam vs. T.V. Satyapal and Anr.** AIR 1977 SC 2421 and **Suraj Lamps & Industries Pvt. Ltd.** (2009) 7 SCC 363 judgment of the Hon'ble High Court of Allahabad in **Bhagauti Singh @ Chedi Singh vs. Mata Prasad Singh** (2022 LawSuit(All) 2018) in support of his contention.

8. Per contra, Ld. Counsel for the plaintiff opposed the instant application of the defendant by filing a reply on 15.03.2023. It is submitted by the plaintiff that the present application has been filed after the passage of almost 13 years to delay the proceedings in the present suit, and the suit of the plaintiff is well maintainable in the present form as the plaint discloses the triable issues; that the present application is gross abuse of

process of law and same deserves to be dismissed with exemplary costs; that vide order dated 10.07.2019 the plaintiff has already filed his evidence by way of affidavit and the matter was fixed for the purposes of cross examination of the plaintiff witnesses on 9.10.2019, and the present application has been filed to delay the adjudication of the present suit; that the plaintiff herein is the owner of the suit property in question and purchased the suit property by paying the sale consideration amounting to Rs. 13,25,000/-; that the plaintiff derives the title of the suit property through the registered documents that is registered GPA dated 12.03.2009, registered will dated 12.03.2009 and registered agreement for sale dated 12.03.2009; that furthermore the conveyance deed dated 17.06.2009 stands in favor of the plaintiff executed by DDA which reflects that the property got mutated in the favor of the plaintiff and he is the bonafide owner of the suit property in question; that the plaintiff has filed certain registered documents through which he derives the right, title or interest in the suit property; that the aforesaid documents supports the averments and stand of the plaintiff that rights in respect of the subject property was created in his favour; that the present plaint read in entirety along with the documents discloses the essential facts and establishes the plaintiff's rights in the claim for which the plaintiff has come before this Court; that the plaintiff's title is not in dispute in view of the above stated registered documents and conveyance deed thus the relief for declaration becomes immaterial for the case in hand; that merely denial of the

plaintiff's title by the defendant will not amount raising title as the defendant herein stands in the category of unauthorized occupant/trespasser; that defendants are the illegal occupants in respect of the suit property and they have no right, title, or interest in the suit property in any manner; that the Plaintiff being the lawful owner of the suit property based on registered sale deed, thus, the application is liable to dismissed only on this sole ground; that the averments in the plaintiff raised by suit only can be decided on merits by leading evidence and not as per the whims and fancies of the Defendant; that the defendants has not filed any counter claim against the plaintiff for any relief qua declaration/prohibitory injunction.

9. It is further submitted that in view of the above, defendants alleged plea that the plaint does not disclose cause of action does not hold good in law and it is prayed that the instant application be dismissed with exemplary cost. The plaintiff relied on the judgment of the Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy reported as AIR 2008 SC 2033** and judgments of Hon'ble High Court of Delhi in **Pooja vs. Narender Kumar Sharma reported as 245 (2017) Delhi Law Times 240** and **Novartis AG & Anr. Vs. Zydus Healthcare Limited & Anr 297 (2003) Delhi Law Times 299**, in support of his contention.

10. Plaintiff and defendant also filed written submissions in support of their contention. Ld. Counsels for both sides are heard on the application and the record and written submissions have been carefully perused in the light of relevant statutory provisions of the law.

"....23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512]

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plaint has to be construed as it stands, without addition or subtraction of words.”

12. Now, advertng to the facts of the case in the light of the settled legal position, it is seen that the plaintiff has averred in the plaint that Smt. Memhuda Parveen has executed agreement for sale, registered General Power of Attorney etc. in favour of the plaintiff. Smt. Memhuda Parveen is daughter of the original owner (Late Sh. Reaz Ahmed) of the suit property and Late Sh. Reaz Ahmed executed a Will in favour of Smt. Memhuda Parveen qua the suit property and other legal heirs of the original owner has executed a registered Relinquishment Deed in favour of Smt. Memhuda Parveen qua the suit property. It is further averred by the plaintiff that a registered Conveyance Deed dated 17.06.2009 has also been executed by D.D.A. in favor of the plaintiff. The plaintiff has also averred about documents such as Electricity bills, house tax receipt, receipt of payment of security and water charges in the name of the plaintiff in respect of the suit property. The plaintiff has also averred in clause 2 of that the possession of the suit property was also given to the plaintiff by the Smt. Mehmuda Parveen on 12.03.2009 and the defendants only sought a time of a day or two to remove their goods from the suit property and on their failure to vacate the suit property, defendants are illegal and unauthorized occupant of the suit property. It is mentioned in the registered agreement to sell dated 12.03.2009 that the sale consideration of the suit property is Rs. 13, 25,000/-. Further, in view of registered GPA dated 12.03.2009, the property was mutated in favour of the plaintiff in municipal records.

13. In this connection, it is pertinent to refer to the judgment of the Hon'ble High Court of Delhi in **Novartis AG & Anr. Vs. Zydus Healthcare Limited & Anr 297 (2003) Delhi Law Times 299**, relied upon by the plaintiff, wherein it is observed as under:

36. Cutting to the chase, the issue of whether a suit discloses, or does not disclose, a cause of action has to be decided on the basis of the facts averred in the plaint. If the factual averments in the plaint lay out a fair field on which the plaintiffs can be said to have a right to sue the defendants, the plaint discloses a cause of action. The likelihood of success in the suit is altogether immaterial. If, however, the facts contained in the plaint, seen in conjunction with the accompanying documents, do not assert any right in the plaintiffs and against the defendant, the plaint does not disclose a cause of action and is liable to be rejected under Order VII Rule 11(a) of the CPC. What is required, therefore, in the plaint, is only the assertion of a right against the defendant, and the existence of supportive assertions and material on the basis of which the right is asserted. What is, (1996) 3 SCC 443 (2004) 6 SCC 254 (2002) 1 SCC 567 (2004) 9 SCC 512 (2004) 9 SCC 786 Neutral Citation Number : 2022/DHC/005462 therefore, to be seen is whether there exists a basis to assert the right, not whether the basis, or supportive material, is sufficient to sustain the assertion.

37. While examining whether the plaint could be rejected Order VII Rule 11(a), the Court is, therefore, not concerned with the chance of success of the plaintiffs, on the basis of the facts averred by him. That is a consideration entirely foreign to Order VII Rule 11(a). All that has to be seen is whether the plaintiffs have made out a right to sue. If a right to sue stands made out on the facts averred in the plaint, the plaint discloses a cause of action, even if the cause of action be thin as tinsel.

14. Further, in **Pooja vs. Narender Kumar Sharma reported as 245 (2017) Delhi Law Times 240**, the Hon'ble High court of Delhi held as follows:

7. The aforesaid contention of the counsel for the petitioner suffers from the basic fallacy that for the purpose of Order VII Rule 11 of CPC, the plaint alone is to be looked into and no other material on record. Thus, the question of looking into the written statement of the defendants, to find out whether the defendants have admitted or disputed the title claimed by the plaintiff in the plaint and to, on the basis thereof, decide whether the plaintiff was entitled to maintain a suit for possession alone or was also required to seek declaration, does not arise.

15. In the present suit, the plaintiff has sought the relief of possession on the basis of a registered documents executed for valuable consideration and said documents were placed on record along with the plaint. The said documents has been duly stamped and registered as per the Indian Stamp Act and Indian Registration Act and entire sale consideration has passed from the plaintiff to Smt. Mehmuda Parveen. On the basis of the said registered documents, the plaintiff has claimed right, title and interest in the suit property even against the previous owner of the suit property. Therefore, plaintiff has disclosed a prima facie right to sue against the defendants and it cannot be said the plaint does not disclose any cause of action for filing of the present suit.

16. In this connection, it is also pertinent to refer to a judgment of Hon'ble High Court of Delhi in **Sanjay Singh vs. Sunita @ Shobha & Anr. (RFA no. 442/2018, DoD: 10.01.2019)**, wherein it observed as under:-

7. In my opinion, the trial court has clearly fallen into an error in placing reliance upon the judgment of the Supreme Court in the case of **Suraj Lamps** (supra) because the judgment of the Supreme Court in the case of Suraj Lamps (supra) only bars looking into the agreement to sell and power of attorney which are not registered whereas the agreement to sell and power of attorney in favour of the appellant/plaintiff are registered documents. Also, there is no requirement that the physical possession is delivered to the beneficiary of a document being an agreement to sell under Section 53A of the Transfer of Property Act, 1882 and the beneficiary, such as the appellant/plaintiff, could always have received symbolic possession, and which was received in this case because one Smt. Sunita was in possession of the suit property. In any case, there is a registered power of attorney in favour of the appellant/plaintiff and therefore, the appellant/plaintiff can be said to represent the original owner Smt. Rajrani @ Brij Mohini for taking possession of the property from any person who does not have any title to stay in the suit property. (emphasis added).

17. It is also important to note that none of legal heirs, including Smt. Mehmuda Parveen, of original owner late Sh. Reaz Ahmed has ever disputed the right, title or interest of the plaintiff in the suit property. It is only the defendants who dispute the title of the plaintiff to the suit property, however, the defendants' claim to the suit property is based on oral understanding with the original owner of the suit property.

18. Further, whether the defendants have any right, title or interest in the suit property or whether the defendants are not the owner of the suit property or whether who, out of the plaintiff or defendants, has better title to the suit property are triable issues and the said issues can only be decided on the basis of the trial wherein both the sides are given opportunity to

lead their evidence depending on the onus on each party to the suit.

19. Therefore, on meaningful reading of the plaint and based on documents placed on record, the plaintiff is entitled to maintain the present suit for possession, mesne profit and injunction and the plaint discloses a right to sue in favour of the plaintiff and against defendants. In view of this, instant application praying for rejection of the plaintiff for failure to disclose the cause of action is not maintainable.

20. Having observed so, the application seeking rejection of the plaint under Order 7 Rule 11(a) CPC r/w Section 151 CPC, filed on behalf of the defendant, is found devoid of any merits and stands dismissed.

Nothing discussed herein above shall be construed to be an expression of opinion on the merits of the case.

**Announced in open Court
on this 16th Day of July, 2024**

**(SOMITRA KUMAR)
District Judge-06
East, Karkardooma Courts,
Delhi/16.07.2024**