

IN THE COURT OF MS POOJA JAIN,
ADDITIONAL DISTRICT JUDGE-03, EAST DISTRICT,
KARKARDOOMA COURTS: DELHI

CS No. 217/2023

YOGESH KUMAR

..... **PLAINTIFF**

Versus

VIKRAM SINGH & ORS.

.....**DEFENDANTS**

15.12.2023

ORDER

1. Vide this order I shall disposed off an application filed by the defendants under Order 7 Rule 11 CPC read with 151 CPC pending adjudication today.

2. Brief facts as stated in the plaint are that plaintiff and the defendant no.1, 3 and 4 are real brothers and sisters while the defendant no.2 is sister-in-law of plaintiff and wife of the defendant no.1. The parents namely Late Sh. Sohan Lal & Late Smt. Savitri Devi were the owners of the properties (i) measuring 70 sq. yds, situated at khasra no. 225, Abadi of East Gokalpur, Harijan Basti, Village Saboli, Illaka Shahdara, Delhi-110094 was purchased by Sh. Sohan Lal on the name of his wife namely Smt. Savitri Devi in the year 1988 after getting government job in 19.01.1984 at Delhi Public Library vide ownership documents. Thereafter, Late Sh. Sohan Lal/father of the plaintiff transferred the above-said property in the name of the plaintiff vide ownership documents dt.

26.12.2022. A flat measuring 50 sq. yds. situated at H. No. G-106 & G-109, 3rd floor, Jagatpuri, Delhi was purchased by Sh. Sohan Lal after retirement in the year 2015 out of his retirement fund in his and in his wife's name after making the payment on the e-stamp paper dt. 24.04.2015 worth Rs.10,30,000/-, the amount was withdrawn from his account. Another built up property measuring 30 sq. yds. situated at D-10, South Anarkali, Delhi was purchased by Late Sh. Sohan Lal after retirement of his wife Smt. Savitri Devi on 31.03.2018 in the name of defendant no.1 & 2. Father of the plaintiff also bought a plot, 70 sq. yds. out of khasra no.225, consisting of one room with boundary walls situated in abadi of East Gokalpur, Harijan Basti at village Saboli, Illaqa Shahdara in the name of his wife with his earning on 19.01.1984 and at that time mother of the plaintiff was having no income source. It is averred that being aggrieved with the offensive and disrespectful conduct of the defendant no.1 and 2, the father of the plaintiff made a registered Will dt. 26.12.2022 regarding all his above-mentioned properties in favour of the plaintiff which was duly registered in Book No.3, volume no.343 bearing registered no.1882 with SR-IVA, Shahdara Delhi as father of the plaintiff had strong apprehension that defendant no.1 & 2 may dupe and defraud the plaintiff. The father of the plaintiff expired on 28.12.2022. On 23.03.2023, the plaintiff alongwith his wife visited the suit property situated at G-106 & 109, 3rd floor, Jagatpuri Delhi, a person namely Tasleem was residing in the above-said property who deposed himself as the tenant in the above-said property and refused to hand over any document of police verification or any rent agreement and said that he has been paying the rent amount of

Rs.7,000/- per month to the defendant no.1.

On the basis of aforesaid facts and circumstances the plaintiff has filed the present suit for the following reliefs:

- “1. A decree of recovery of possession of the suit property bearing no. G-106 & G-109, Third Floor, Jagatpuri, Delhi on the basis of the above-said registered Will dt. 26.12.2022;
2. A decree of recovery of possession of the suit property bearing no. D-10, South Anarkali, Delhi on the basis of the above-said registered Will dt. 26.12.2022;
3. A decree of permanent injunction thereby restraining the defendants from subletting, creating selling, dispossessing, raising any construction/renovation, parting and creating any third party interest in the suit properties bearing no. G-106 & G-109, Third Floor, Jagatpuri, Delhi and bearing no. D-10, South Anarkali, Delhi as well as restraining the defendants not to make any alteration and modification in the suit property;
4. A decree of damages/mesne profit to the tune of Rs.1,05,000/- w.e.f. February, 2022 to filing the present suit till the handing over the possession of the suit property bearing no. G-106 & G-109, Third Floor, Jagatpuri, Delhi
5. Cost of the suit.”

3. The rejection of plaint/suit filed by the plaintiff has been sought by the defendants on the ground that the plaint does not disclose any cause of action and also suit of the plaintiff is barred by law of

limitation and therefore, the present suit of the plaintiff is liable to be dismissed.

4. Before proceeding any further, it is relevant to discuss the Law of Rejection of Plaint as enshrined under Order 7 Rule 11 CPC which reads as under:-

“Rejection of Plaint - The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficient stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rules 9:”

5. For deciding an application under Order 7 Rule 11 CPC, it is well settled law that Court has to examine only the averments made in the plaint and not the defence of the defendant or the contents of the application under Order 7 Rule 11 CPC. The power to reject the plaint on this ground should be exercised only if the Court comes to the conclusion that even if all the allegations set out in the plaint are proved, despite that the plaintiff would not be entitled to any relief.

6. I have heard the arguments and perused the submissions made by Ld. Counsels for both the parties.

7. In a case titled as, **A.B.C LAMINART (P) Ltd. & ANR. Vs. A.P. AGEBCUES, SALEM** it is mentioned:

“(para12). A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is bundle of fact which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff”.

8. In a case titled as, **Church of Christ Charitable Trust & Educational Charitable Trust & Educational Charitable Society v. Pooniamman Educational Trust** {2012 8 SCC 706}, the Hon'ble Apex Court in Para 11 observed thus ;

"11. This position was explained by this Court in Saleem Bhai vs. State of Maharashtra, in which, while considering order 7 rule 11 of the code, it was held as under :

"9. A perusal of order 7 rule 11 CPC makes it clear that the relevant facts for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant or at any time before conclusion of trial. For the purpose of deciding an application under clause's (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the plea taken by the defendant in the written statement would be wholly irrelevant at that stage."

9. Keeping in mind the settled position under law and advertent to the factual matrix of the present matter, the present suit filed by the plaintiff seeking relief in respect of possession of suit property and permanent injunction against the defendants on the basis of registered Will and mesne profit against the defendants. Whether the plaintiff would be able to prove Will is a question which will be discussed at later stage.

10. In view of the above discussion and applying the judicial principles and law of provisions, this Court is of the opinion that *prima-facie* the suit cannot be stated to be without any cause of action. As far as it is concerned with the plea of suit being barred by Law of Limitation is mixed question of law and fact which cannot be decided at this stage without trial. Hence, the plaint cannot be rejected at the threshold without the parties to be given an opportunity to prove the same through evidence.

11. Having observed so, the application seeking rejection of plaint u/o 7 Rule 11 CPC is devoid of merits and deserves dismissal. Hence the same stands dismissed.

Application is disposed off accordingly.

**Announced in the open Court
Dated : 15.12.2023**

**(POOJA JAIN)
Additional District Judge-03
East, KKD Courts, Delhi**