

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

CS No. 224/23

Bhawani Singh

.....Plaintiff

Versus

Vimal Jain & Anr.

.....Defendants

ORDER

1. An application filed by the defendant under Order VII Rule 11 CPC r/w s. 151 CPC is pending adjudication today.

2. The brief facts of the present case are that the plaintiff has filed the above mentioned suit for declaration, permanent and mandatory injunction against the defendants. It is averred that plaintiff and his brother Jagdev Singh are the absolute owner and in possession of the property bearing no IX/4132, Gali No.12A, Ajit Nagar, Gandhi Nagar, Delhi-110031 measuring 100 sq. yards constructed upto ground, first and second floor as the same was transferred by the wife of the plaintiff Smt. Saroj Singh in favour of the plaintiff and his brother. Smt. Saroj Singh is the special attorney of Smt. Indira Devi and Smt. Raj Rani vide SPA dt. 26.11.1997. Plaintiff has been living in the suit property since 1983 at the first floor of suit property and second floor is in possession of Sh. Jagdev Singh alongwith his family. It is stated that in February 2002, plaintiff appointed Sh. Suresh Kumar for looking after the suit property by executing the GPA but after coming to

know about the ill intention of Sh. Suresh Kumar, cancelled the same in the month of July, 2005. A litigation was also pending between plaintiff and Punjab & sind Bank which was cleared on 31.10.2023. It is further stated that in the month of December, 2013 the defendant no.1 being the well known of the plaintiff requested the plaintiff for his residence and plaintiff allowed him to live on the ground floor of the suit property for a period of one year by taking the refundable security amount of Rs.5,00,000/- and it was decided between the defendant no.1 and the plaintiff that plaintiff would not charge any rent from the defendant no.1 but defendant no.1 has to pay electricity and water charges at his own and defendant no.1 would also not charge any interest on the above-said security amount. In the month of December, 2014, the plaintiff requested the defendant no.1 several times to vacate the suit property but defendant avoided the same on one pretext or the other and later on plaintiff received a false and frivolous notice from the defendant no.1 which was properly replied by the plaintiff. Thereafter, plaintiff served with the court's summon with respect to the case filed by the defendant no.1 against the plaintiff thereby showing the plaintiff as tenant in the suit property and also filed some rent receipts in support of his alleged claim. In the year 2018, plaintiff came to know that Suresh Kumar has transferred the suit property in the name of his mother Smt. Nand Rani by preparing forged and fabricated documents who has again transferred the said property in favour of defendant no.1 by misusing the said forged and fabricated documents vide registered sale deed dt. 13.10.2005. Thereafter, plaintiff asked the said Suresh Kumar and defendant no.1 to get cancelled the alleged sale deed dt. 13.10.2005 but they both threatened to him.

3. It is further stated that officials of defendant no.2 have executed the alleged sale deed dt. 13.10.2005 without following the rules and regulations and the same was executed on the basis of false and fabricated documents so the same is liable to be declared as null and void. Plaintiff sent a legal notice dt. 02.06.2020 for getting cancelled the above-said sale deed which was not replied by the defendants. The plaintiff has apprehension that on the basis of the alleged sale deed, the defendant no.1 may sell, transfer or create third party interest in the suit property.

4. The defendant no.1 has filed the present application under Order 7 Rule 11 CPC r/w s. 151 CPC for rejection of plaint as plaintiff has no locus-standi to file the present suit in the capacity of owner/co-owner as the defendant no.1 has purchased the suit property from Smt. Nand Rani for a consideration of Rs.2 lacs by cheque and vide registered sale deed dt. 13.10.2005. It is the case of the defendant no.1 that at that time plaintiff and his brother Jagdev Singh were tenants of the erstwhile owner at the first floor of suit property and defendant also allowed them to stay in the suit property in the capacity of tenants. Even otherwise the defendant no.1 has also filed a suit no.21/2015 titled as Vimal Jain vs. Jagdev Singh and Vimal Jain vs. Bhawani Singh for possession, recovery of arrears of rent, mesne profit and damages. It is further submitted that plaintiff and his brother paid the rent to his client but stopped making payment to defendant no.1 from 01.04.2012. It is averred that suit of the plaintiff is barred by the law of limitation and there is no cause of action against the defendants as defendant no.1 is the absolute and lawful owner and therefore, present suit deserved to be dismissed u/o VII Rule 11 CPC.

5. In reply to the application, plaintiff has denied the averments made in the application. It is denied by the plaintiff that plaintiff and his brother were the tenants in the suit property and defendant allowed them to stay in the suit property under the capacity of tenants or that plaintiff had ever paid the rent to defendant no.1 and further stopped making payment from 01.04.2012. It is stated by the plaintiff that he has never sold the suit property to any Suresh Kumar and plaintiff executed the GPA in his favour just to look after the suit property as one case was pending with respect to the suit property and that too was cancelled orally but said Suresh Kumar fraudulently misused the said GPA by transferring the suit property in the name of his mother Smt. Nand Rani while the plaintiff has no concern with the said Smt. Nand Rani. It is submitted that suit of the plaintiff is maintainable as the same is filed within the period of limitation. Thus, it is prayed that application of the defendant be dismissed with heavy cost.

6. Before proceeding any further, it is relevant to discuss the Law of Rejection of Plaint as enshrined under Order 7 Rule 11 CPC. Order 7 Rule 11 (d) CPC is reproduced herein-

“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 insufficiently 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.”

7. 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. The plaint is required to be read as a whole and the pleas taken by the defendants in the written statement as well in the application under Order 7 Rule 11 CPC cannot be made basis to decide the application.

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

10. In para no.4 of plaint, it is stated by plaintiff that he appointed one Suresh Kumar as his General Attorney in February, 2002 to look after the suit property. Perusal of sale deed dt. 02.02.1998 reveals that plaintiff and his brother were owners of the suit property at that time. It is further stated by

plaintiff that he cancelled the said power of attorney given to Suresh Kumar in July, 2005. It is also averred in the plaint that at the time of evidence in the case filed by defendant against the plaintiff in the year 2018, the plaintiff came to know about the transfer of documents by Suresh Kumar in favour of his mother (Nand Rani) and further transfer of sale deed by Nand Rani in favour of the defendant. It is pertinent to note here that the documents were executed in favour of Nand Rani in the year 2003 and further in favour of the defendant in the year 2005, however, the possession of the suit property remains with the plaintiff and never been transferred from plaintiff to anyone. In view of the above discussion it cannot be concluded that the suit prima-facie does not disclose cause of action or barred by law of limitation. As far as it is concerned with the plea taken by defendant that the plaintiff has no locus standi to file the present case against the defendant as he has purchased the suit property from Nand Rani and not from the plaintiff. The plaintiff would be responsible for the consequences of not impleading Suresh Kumar and Nand Rani in the array of parties in present suit.

11. Thus, from the facts narrated above, this court is of the opinion that on the plain reading of the contents of the plaint, the suit apparently is not barred by law and also disclosed a cause of action against the defendant. The issue regarding the suit being barred by the law of limitation is triable issue for which the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11 (d) CPC and therefore, the application filed by the defendant is dismissed as the rejection of plaint would amount to prejudging a fact which is yet to be proved.

12. However, since limitation is a mixed question of law and fact and the plaintiff has specifically pleaded which ultimately raises an issue and

requires evidence, the controversy with respect to law of limitation is kept open with the observation that it would be disposed of on merits after the evidence of both the parties would come on record particularly on the issue of limitation.

13. With these observations, the application filed by the defendant is disposed off as dismissed.

**Announced in the Open Court
dt. 09.11.2023**

**(POOJA JAIN)
Additional District Judge-03
East/Karkardooma/Delhi**