

In the Court of Sh. Sanatan Prasad
Additional District Judge-02, (East District),
Karkardooma Courts, Delhi.

Civil Suit No.3097/2016

Sh. Bhagat Singh & Ors.Plaintiffs

Versus

Sh. Rajinder PrashadDefendant

ORDER

21.08.2023

04.00pm

1. By this Order, I shall dispose of application under Order, 7, rule, 11, read with Section, 151, CPC, filed by defendant, seeking rejection of the plaint in the suit and its consequent dismissal.
2. It is averred, in the application that plaintiffs have instituted the present suit without accrual/disclosure of any cause of action and suit is time barred. Plaintiffs have no locus standi to file the suit and they have not properly assessed the valuation in respect of property in question and have furnished deficient court fees, which is not according to the provisions of Registration Act. Plaintiffs had instituted a suit No.497/07, titled as Desh Raj, through LR's v. Rajendra Prasad and another suit No.291/08, filed by the plaintiff's

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father and grand father Sh. Desh Raj, through LRs v. Commissioner of Police & Ors., on same cause/(s) of action, two cases were filed by defendant Rajendra Prasad, i.e., Suit No.117/06 for declaration, permanent injunction and recovery of money and another suit No.496/07 for permanent injunction, and as such, there were four cases, which were pending and all of them were consolidated by the Ld. Court of Sh. Anil Shisodia, SCJ-RC, North-East, KKD, Delhi, vide, Order dated 19.08.2016 and suit No.117/06 was treated as a leading suit and the other suits were clubbed with suit No.117/06. Ld. Court of Sh. Anil Shisodia had dismissed both the suits filed by Sh. Desh Raj, by Order dated 04.03.2011, against which a civil appeal was preferred, which was also dismissed by the Ld. Appellate Court of Sh. G.N.Pandey, ADJ, KKD Courts, Delhi, by Order, dated 02.06.2014. Present suit is barred by principles of resjudicata, as all facts/issues have already been discussed and decided in the above mentioned four matters and prayed accordingly. Reliance is placed upon the decisions of Hon'ble Supreme Court titled as **Srihari Hanumandas Totala v. Hemant Vithal Kamat and Others, (2021), 9 SCC 99 and Hardesh Ores (P) Ltd v. Hede and Company, (2007) 5 SCC 614.**

3. Replying, to the application, preliminary objections, were taken, inter-alia, that same is filed just to delay the adjudication of matter; That defendant has not come up with clean hands and application is

filed with ulterior motives/malafide intentions, just to tease, harass and terrorize the plaintiffs. On merits, all other averments have been denied and prayer is made to dismiss the application.

4. I have heard, Ld. Counsels for the parties, and have carefully, gone through written arguments filed by the defendant, authorities relied on, also judicial record, in the light of relevant statutory provisions of the 'Civil Procedure Code'. It is settled law that while considering rejection of the plaint, it is only the averments in the plaint, which are to be seen and considered, and it is the substance of the suit, which is material. Order 7 Rule 11 CPC reads as follows :-

“11. 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 returned 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 provisions of rule 9:]
- [Provided that the time fixed by the Court for the

correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

5. Law with regard to Order VII, Rule 11, CPC is well settled. While dealing with an application for rejection of plaint under Order VII, Rule 11, CPC, the court has to consider only the averments made in the plaint and not the defence of the Defendant or the contents of the application under Order VII, Rule 11, CPC. For this, I am placing reliance upon the decision of Hon'ble Supreme Court titled as **C. Natrajan v. Ashim Bai**, reported as (2007), 14, SCC, 183, wherein, it has been observed as under:

"8..... An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence."

6. In another case, titled as **Popat and Kotecha Property v. State**

Bank of India Staff Assn. Reported, as (2005), 7 SCC, 510, Hon'ble Apex Court, elaborately, dealt with the law under Order VII, Rule 11, CPC. Further, in the case of **Saleem Bhai v. State of Maharashtra, (2003), 1, SCC, 557,** it was held with reference to Order 7, Rule 11, of the Code that the relevant facts, which need to be looked into for deciding an application thereunder are the averments in the plaint. The court can exercise the power at any stage of the suit -- before registering the plaint or after issuing summons to the Defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Order 7, Rule 11, of the Code, the averments in the plaint are the germane; the pleas taken by the Defendant in the written statement would be wholly, irrelevant at that stage. In another matter titled as **I.T.C. Ltd. v. Debts Recovery Appellate Tribunal, (DOD : 19.12.1997),** it was held that the basic question to be decided while dealing with an application filed under Order 7, Rule 11, of the Code is whether a real cause of action has been set out in the plaint or something, purely illusory, has been stated with a view to get out of Order 7, Rule 11, of the Code.

7. Furthermore, the law with regard to Order VII, Rule 11, of the CPC has been propounded by Hon'ble Supreme Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali & Ors. 2020, SCC, OnLine, SC,**

562. Reference in this regard may be made to relevant paragraphs of the judgment, which are set out below:

"....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.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

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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23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction

of words.”

8. In the instant suit, the plaintiffs are claiming reliefs of declaration, possession and permanent injunction, in respect of property, bearing House No.R-53, comprising in Khasra No..193/3, Village Khichripur, Delhi, with its disputed portion, specifically shown in red colour, in the site plan, annexed with the plaint, which is stated to be in possession of Mr. Desh Raj, i.e., predecessors of the plaintiffs, who was recorded owner/Bhumidar in the same and after his demise, the property in question was devolved upon his legal heirs, i.e., plaintiffs. There was/is a chequered history of litigation between the parties in respect of disputed portion of property in question, as mentioned in para 7 of the plaint. It is pleaded that plaintiffs' property neither touch any side nor comprising part of khasra No.193/2, as the defendant is, in fact, claiming it as falling in khasra no.193/2, which is not claimed by the plaintiffs and further, does not touch any side of the property, belonging to the defendant, nor it comprises in khasra No.193/2. It is further claimed that the defendant falsely prepared documents in respect of portion of suit property, comprising in Khasra No.193/2, which is not related to plaintiffs and this fact, is clearly, admitted by the defendant in the Preliminary Objection No.9 of his written statement, stating that plaintiffs' father/grandfather has already sold the property, bearing Khasra No.193/2, presently bearing No.R-1/10, thus, plaintiffs have no locus

standi to file the suit.

9. Plaintiff further claims that from the above, it is crystal clear that both parties are claiming property under different khasra numbers, as the possession of said portion of property in question, as claimed, by the defendant, was stated to be never handed over to plaintiffs, as it already, belonged to plaintiffs and defendant has no concern with the same. It appears that the relevant para No.23 relating to 'cause of action' as mentioned in the plaint thereunder, clearly shows, arising of cause of action in favour of the plaintiffs, to file the present suit, as claimed by them.
10. Adverting to the facts of the case, in the light of settled legal position, this Court is of the opinion that *prima facie*, the suit cannot be said to be have been filed by the plaintiffs without having any cause of action in their favour or they do not have any locus standi to file the same. Further, it cannot be said that suit is barred by law of Limitation and thus, same cannot be rejected at its threshold without giving an opportunity to the parties to prove the same through evidence, as the question of limitation is a mixed question of law and facts. The perusal of para no.24 of the plaint would also reveal that plaintiffs have valued the suit for the purposes of court fees and jurisdiction on the relief of possession at Rs.25,00,000/- and at fixed court fee of Rs.26,744/- on the plaint; The plaintiffs have valued the suit on the relief of declarations and prescribed court fee of Rs.200/-

each, for Rs.40/- is affixed on the plaint; And on the relief of permanent injunction, plaintiffs have valued the suit @ Rs.130/- on which court fee of Rs.13/- has been affixed on the plaint. On the point of res-judicata, it is stated in the reply to the application, U/o VII, Rule 11, CPC, by the plaintiffs that the earlier round of litigation have not any kind of bearing in the present suit, as the issues, which were earlier decided, were different from the issues, involved in the present matter, inasmuch, as, now, the relief of Declaration, also possession are being claimed and decretal/(s) / dismissal/(s), of earlier suits in favour of the defendant and against the plaintiffs would not operate as res-judicata, as those findings relate to the reliefs of injunctions against the plaintiffs and in favour of the defendant, having no value for application for the principles of res-judicata, at all and the relief of declaration was never allowed to the plaintiffs, as the earlier suit was only partly decreed by the Ld. Court of Sh. Anil Kumar Sisodia, Ld. SCJ-cum RC, (NE), KKD Courts, Delhi by judgment, dated 04.03.2011, even Appeal preferred by the plaintiffs, qua this very partial decretal also stood dismissed by the Ld. Appellate Court of Sh. G.N.Pandey, ADJ, KKD Courts, Delhi, by Order, dated 02.06.2014, obtaining finality and thereafter, the present suit was filed by the plaintiffs on 29.07.2016, which is within the period of limitation, as provided under Article 58 of The Limitation Act, 1963, for a period of three years when the right to

sue first accrues. Therefore, going by/through the contents of plaint, this Court is of the opinion that the plaint in the suit cannot be rejected on the grounds raised by defendant in the application, under consideration, without framing of issues including that of limitation and taking of evidence by the parties.

11. Considering the aforesaid discussion, I am of the view that the application filed by the defendant, seeking rejection of plaint under Order 7 Rule 11 CPC deserves dismissal, as it is devoid of merits. Hence, same stands dismissed.
12. Be put up for plaintiffs' evidence in the matter on **27.09.2023**. Advance copies of the affidavits of PWs be supplied to the Ld. Counsel for the defendant against receipt and atleast a month before. PWs shall be present.

Announced in open Court.

(SANATAN PRASAD)
Additional District Judge-02(East)
Karkardooma Courts, Delhi/21.08.2023