

01.12.2023

Present: Ms. Nikita, ld. proxy counsel for plaintiff.  
Defendant no. 1 is already ex-parte.  
Sh. Yogesh, ld. counsel for defendant no. 2 and the  
proposed defendant namely Sh. Yashpal Rawat.

An application under Section 151 CPC for review of order dated 28.03.2023 passed by ld. Predecessor of this court was moved on 07.08.2023 on behalf of proposed defendant. Heard on the application. Since the present application under Section 151 CPC has been moved for the review of order for which there is a specific provision in the CPC vide Section 114 r/w Order XLVII CPC, accordingly the present application is hereby considered in view of these provisions.

It is stated that the applicant has moved the application under Order I Rule 10 r/w Section 151 CPC for impleading the applicant as defendant no. 3, however, the ld. Predecessor of this court vide order dated 28.03.2023 dismissed the application by stating that the applicant did not file any supporting document. It is stated that the documents in favour of applicant qua property in question are already lying in the record and thus the order which was passed is liable to reviewed and the application under Order I Rule 10 CPC moved by the proposed applicant deserves to be allowed.

Record perused.

For the sake of convenience, the provision of Order XLVII CPC is reproduced below:-

“Application for review of judgment-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence, which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. In **Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma (1979) 4 SCC 389 AIR 1979 SC 1047**, it has been held by the Hon'ble Supreme Court that *“the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be*

*confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court”.*

The order dated 28.03.2023 passed by ld. predecessor of this court is a detailed one in which arguments which were advanced on behalf of the proposed defendant/applicant and the arguments on behalf of the plaintiff were mentioned and duly considered. The order dated 28.03.2023 is a speaking one.

This court is not sitting in appeal to the orders passed by the ld. predecessor of this court. There is no error apparent on the face of the record in the order dated 28.03.2023 nor there is any other sufficient reason for review of order dated 28.03.2023. Accordingly, the application for review of order dated 28.03.2023 is hereby dismissed.

Another application under Order VII Rule 11 CPC moved on behalf of defendant no. 2 on 19.02.2020 is pending till date. The reply of the application is already on record. Heard on the application.

It is mentioned in the application that the suit of the plaintiff is not maintainable since the plaintiff has filed only the notarized documents which are GPA, agreement to sell etc without possession and as such the suit is not maintainable. It is further stated that the plaintiff not approached the court with clean hands as the defendant no. 2 is the tenant of Sh. Yashpal Rawat and is not a trespasser in property in question. It is further stated that Sh. Yashpal Rawat purchased the property in question from defendant no. 1. It is further stated that the valuation of suit property has not been correctly nor appropriate court fees filed. It

is further stated that the allegations in the plaint are completely false as there is no relationship of landlord and tenant between the plaintiff and defendant no. 1. It is stated that defendant no. 1 never offered to sell his property to the plaintiff and the plaintiff just want to grab the property in question. It is further stated that since the defendant no. 2 is the tenant under Sh. Yashpal Rawat and as such the suit is not maintainable. It is further stated that now the defendant no.1 is not the actual owner of the property.

The reply to the present application has been filed on behalf of plaintiff wherein it stated that the defendant no. 2 is not a tenant of Sh. Yashpal Rawat. It is further stated that defendant no. 2 has no right to move the present application.

Records perused.

For the sake of convenience Order VII Rule 11 CPC reproduced as below:-

“Rejection of plaint.-The plaint shall be rejected in the following case:-

- (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 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.”

It is settled proposition of law that the averments in the plaint are the germane for the purpose of deciding an application under Order VII Rule 11 of the Code of Civil Procedure and the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage. At the same time, it has also been held that the list of documents filed along with the suit are part of the pleadings (**Ref Liverpool & London SP & I Asson. Ltd. v. M.V. Sea Success**) (2004) 9 SCC 512.

This is the suit filed for the relief of specific performance of contract, declaration, possession, arrears of rent, mesne profits, permanent and mandatory injunction. As per the plaintiff, he entered into an agreement to sell with defendant no. 1 to purchase the property in question and at the time of execution of agreement to sell the possession was handed over to him but defendant no. 1 was made tenant under the landlordship of plaintiff qua the suit property on the same day. It is stated that the rent agreement was executed between plaintiff and defendant no. 1 on the same day and thereafter on 21.06.2018 another rent agreement was executed between the plaintiff and defendant no. 1. It is further stated that defendant no. 2 illegally trespassed in the property in question and hence the present suit was filed.

From the perusal of the plaint and the documents annexed by the plaintiff it is nowhere coming on record that the defendant no. 1 sold the property to one person namely Sh. Yashpal Rawat or Sh. Yashpal Rawat inducted defendant no. 2 as a tenant in the property. It is nowhere coming on record from the

plaint that defendant no. 1 never intended to sell the property in question to plaintiff. The averments as mentioned in the application are the defences of the defendant which are of no consequence to the present application under Order VII Rule 11 CPC. Vide order dated 10.04.2019, the necessary amendment as to valuation of suit for jurisdiction and court fees was allowed. Accordingly, present application is hereby dismissed.

Pleadings are already complete. The parties are denying each and every document of the opposite party. In these circumstances, the parties are at liberty to prove their respective documents, as per law, during trial.

From the pleadings of the parties, following issues are framed as under :

- (i) Whether the plaintiff is entitled to decree of specific performance of contract, as prayed for ? OPP
- (ii) Whether the plaintiff is entitled to decree of possession, as prayed for ? OPP
- (iii) Whether the plaintiff is entitled to decree of declaration, as prayed for ? OPP
- (iv) Whether the plaintiff is entitled to the recovery of Rs. 44,50,000/- along with interest, in alternative, as prayed for ? OPP
- (v) Whether the plaintiff is entitled to recovery of arrears of rent, as prayed for ? OPP
- (vi) Whether the plaintiff is entitled to decree of damages/mesne profits along with interest, if any, and at what rate, as prayed for ? OPP
- (vii) Whether the plaintiff is entitled to decree of permanent

injunction, as prayed for ? OPP

(viii) Relief.

No other issue arises or is pressed by the parties at this stage. List of witnesses be filed by the parties within fifteen days. Affidavit(s) of the plaintiff's witness(es) be filed within two weeks with advance copy to the opposite party against receiving two days prior to the next date of hearing.

Put up for PE on 19.02.2024.

(KAPIL KUMAR)  
ADJ-01/NE/KKD/DELHI  
01.12.2023 sb