

**IN THE COURT OF AASHISH GUPTA, DISTRICT JUDGE-01,
NORTH-EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

In the matter of

CS no. 69/2023

Smt. Rani Devi

W/o Sh. Satish Chand

R/o G-72, Street No. 3,

Bhrampuri,

Delhi-110053

..... Plaintiff

versus

1. **Sh. Chander Prakash**

S/o Sh. Babu Ram

2. **Smt. Prem Wati**

W/o Sh. Chander Prakash

Both R/o K-381, Near Primary School,

4th Pusta, Gautam Vihar, Ghonda,

Delhi-110053

3. **Smt. Usha Kapoor**

W/o Sh. Ajay Kapoor

4. **Sh. Ajay Kapoor**

S/o Late Sh. M. C. Kapoor

Both R/o C-60/591, 2nd Floor,

Gali No. 3, Ganesh Nagar-2,

Shakarpur, East Delhi,

Delhi-110092.

..... Defendants

30.01.2025

Present : None for the parties.

ORDER

1. Vide this order, I shall decide the application u/O VII Rule 11 CPC moved by D-1. D-1 wants rejection of present plaint primarily on following grounds:

(a) **That the plaint is barred by section 12 CPC.** This is premised on the ground that prior to the filing of the present suit, plaintiff (along with her husband Satish Chand) herein had filed an earlier suit bearing no. 8984/16 against D-1 on 10.02.2006. The said suit was dismissed in default and could never be revived. It is the contention of D-1 that since in the present suit plaintiff is suing on the same cause of action, the present suit is hit by section 12 CPC.

(b) **That the present suit also hit by the principle of *res judicata*.** The said plea is also premised on the same ground as noted above while noting the plea taken qua applicability of section 12 CPC.

(c) **That the present suit is barred by time.** It is the contention of applicant/D-1 that in the earlier suit, he has raised a dispute on the title of the plaintiff and thus, the relief of declaration of said suit [under prayer (i) that the plaintiff has better title over the suit property] should have been sought within a period of three years

from the time when D-1 disputed the title of plaintiff in the earlier suit. This, as per applicant/D-1 was sometime in 2009. It is the contention of the applicant that since the present suit has been filed in March, 2023, it is beyond limitation. Reliance is placed on Article 58 of Limitation Act, 1963.

(d) That the plaintiff has sought a relief of declaration with possession in this case from the defendants. But, as per applicant/D-1, she has valued his relief of declaration only at Rs.200/-. **It is the contention of the applicant that the same is grossly under-valued and therefore, the plaint is liable to be rejected.**

2. In reply to the said application, counsel for plaintiff argued that the suit is maintainable in the manner framed as there has never been adjudication of rights of the parties by a court of competent jurisdiction. It is her argument that till actual adjudication of rights takes place between the parties, bar of *res judicata* shall not apply. She disputes other contentions raised by D-1 and prayed for dismissal of the application.
3. Arguments heard. Record perused.
4. It is admitted position before this court that plaintiff herein namely Rani Devi had earlier filed a suit against D-1 bearing CS no. 8984/16 (original no. 849/06). This suit was filed on 10.02.2006. Other defendants i.e. D-2 to D-4 were not parties to

the said suit. Plaintiff has herself placed on record copy of the earlier plaint/former suit along with written statement filed by D-1 in the said suit.

5. It is also not disputed before this court that the said suit was premised on the contention that D-1/Chander Prakash was purportedly a tenant in the said property and in the said suit plaintiff wanted recovery of possession of the property in question along with arrears of rent.
6. Admittedly, the said suit was dismissed in default vide order dated 25.08.2017. The attempt of plaintiff to get the same revived by moving an application u/O IX Rule 9 CPC also met its Waterloo on 05.03.2018. Fact of the matter remains that the said former suit could never be revived.
7. Now, it is contended that since the said suit was never revived, a fresh suit by the plaintiff inter alia alleging recovery of possession shall be hit by section 12 CPC.
8. I am not inclined to accept the said argument raised on behalf of D-1/applicant. This is because, even if it is taken that earlier suit of the plaintiff did not result in adjudication of her rights, fact of the matter remains that she has alleged that D-1 is a tenant. This plea is taken in both the suits. Now, it is settled law that landlord-tenant relationships are continuous and reoccurring in nature. It means that with each passing month, a fresh cause of action

accrues in favour of the landlord to get his or her premises vacated from the tenant.

9. Even though, D-1 disputes that he was tenant of plaintiff/her husband, the said dispute is inconsequential for deciding the present application. This is because while deciding the application u/O VII Rule 11 CPC, only the contents of the plaint along with documents filed by the plaintiff are to be read. Now, if I read the plaint of the plaintiff with documents, it transpires that in the former suit and in the present suit, plaintiff has alleged that D-1 was her tenant. Even though, plaintiff failed to get the property vacated by way of the former suit, still, in law, she can maintain a fresh suit to get her property vacated on the ground that with each passing month, a fresh cause of action accrued in her favour and thus, she could very well institute a fresh suit on such fresh cause of action. Thus, the dismissal in default of a former suit shall not preclude the plaintiff from filing a new suit as this new suit is not based on the earlier cause of action (based on which former suit was filed). Thus, there is no question of bar to the present suit u/s 12 CPC. Thus, the contention of D-1 on that count is misconceived and is accordingly rejected.

10. Again, as far as the contention of D-1 that the present suit is barred by the principle of *res judicata* is concerned, suffice is to say that there was no actual adjudication of rights of parties in the earlier suit. Admittedly, the earlier suit was dismissed in default

and thus, without actual adjudication of rights of the parties, plea of *res judicata* shall not bar the present suit. Even the identity of the parties in the two suits is not same. Again, the cause of action in this case is not identical to the earlier cause of action. Thus, plea of *res judicata* is misconceived. Accordingly, the said contention taken by D-1 is also rejected.

11. As far as the third contention of applicant/D-1 with respect to limitation is concerned, in my humble opinion, the same is also misconceived. Plaintiff in the former suit had claimed that D-1 is her tenant. This was disputed by D-1 who filed his written statement claiming that he is not a tenant in the property and his signatures were taken on some documents by plaintiff/her husband. The said documents were purportedly to be kept as security for securing some money transaction between the parties.
12. It was argued that this contention of D-1 taken in the earlier suit raised a cloud on title of plaintiff and thus, a declaration qua ownership should have been sought by her soon after such cloud was raised. This, as per the applicant, should have been sometime in 2009/2010.
13. In my humble opinion, whether the plea taken in the former suit amounted to raising a cloud on the title of the plaintiff or whether the plea of declaration of title should have been taken on or about 2009/2010 is a mixed question of fact and law and for deciding

the same, evidence shall be necessary. Such a question cannot be decided in an application u/O VII Rule 11 CPC at the very inception of the suit. Parties shall be required to prove the pleadings of the earlier suit and the issues therein. Thereafter, on thread-bare analysis of the former suit pleadings and after coming to the conclusion that the contention of D-1 taken in earlier suit was sufficient to raise cloud on the title of plaintiff can one say that the relief of declaration is hit by limitation, if at all. Without any such opportunity, it is too early to decide such complex question of fact and law only on an application u/O VII Rule 11 CPC in the manner prayed. Thus, the plaint in hand cannot be rejected u/O VII Rule 11 CPC in the manner prayed by the applicant/D-1. Therefore, the said contention of D-1 is also declined.

14. This brings me to the last contention raised in the present application qua improper valuation of the relief of declaration. In order to appreciate the said contention, I may note the relief portion of the valuation/court fees/jurisdiction para along with corresponding prayer clause which read as under:

“15 (i) For the relief of declaration, the suit is valued at Rs.200/-, upon which the plaintiff has paid the fixed court fees of Rs.20/-.

(ii) For the relief of possession the valuation of the suit is at Rs.1,80,000/- (15,000/-x12=1,80,000/-), upon which the plaintiff has paid court fees of Rs.4,100/-.

PRAYER:

(i) A decree of declaration, to the effect that plaintiff is the better title of the suit property i.e. property bearing Old No. L-201 (New No. K-381), area measuring 120 sq. yds., part of Kh. No. 786 situated in the area of Village Ghonda, Gujran Khadar in the abadi of Gautam Vihar, Near Primary School, Ballo Ka Tubewell, 4th Pusta, Gautam Vihar, Delhi-110053 (shown in red colour in the attached site plan), being purchased by her from the defendant No. 1 and 2 by virtue of the title documents dt. 13.10.2003; AND

(ii) A decree of declaration, to the effect that the defendant i.e. Sale Deed dt.20.01.2023 executed by the defendant No.1 in favour of the defendant No. 3 and 4 qua the part portion of 60 sq. yds. of the suit property bearing Old No. L-201 (New No. K-381), part of Kh. No. 786 situated in the area of Village Ghonda, Gujran Khadar in the abadi of Gautam Vihar, Delhi-110053 (shown in green colour in the attached site plan), are illegal, unlawful and null and void and not binding upon the plaintiff; AND

(iii) A decree of possession, thereby directing the defendant No. 1 to 4 to handover the peaceful and vacant possession of the suit property bearing Old No. L-201 (New No. K-381), area measuring 120 sq. yds. (60 Sq. Yards in the possession of the defendant No. 1 and 2 and portion area measuring 60 sq. yds. in the possession of the defendant No. 3 and 4), part of Kh. No. 786 situated in the area of Village Ghonda, Gujran Khadar in the abadi of Gautam Vihar, Near Primary School, Ballo Ka Tubewell, 4th Pusta, Gautam Vihar, Delhi-110053 (shown in red and green colour in the attached site plan) to the plaintiff.”

15. At this stage, I may note that plaintiff herein claims that she had purchased the suit property from D-1 and D-2 in 2003. Thereafter, as per her, she inducted D-1 as a tenant by way of a written rent agreement dated 25.11.2004. Eventually, when D-1 refused to vacate the property, she filed suit bearing no. 8984/16 (referred in the earlier part of this order) which was eventually dismissed in default. She now claims that she has learnt that D-1 has sold 60 square yards of portion of the suit property (in collusion with D-2) to D-3 and D-4. With the entire suit property being about 120 square yards, now 60 square yards is with D-1 and D-2 while the

other 60 square yards is stated to be in the possession of D-3 and D-4. As per plaintiff, she is the owner of complete 120 square yards and defendants are now disputing her title. She also claims that D-1 and D-2 are also questioning her landlordship by having sold some portion of her property given on rent to them.

16. This has led her to seek declaration that **she has better title** over the suit property [prayer (i)]; another declaration that the documents/sale deed executed by D-1 in favour of D-3 and D-4 as null and void; possession of 60 square yards of land is sought from D-1 and D-2 and remaining 60 square yards of land is sought from D-3 and D-4. Thus, possession of total area of 120 square yards is sought in the plaint.
17. Now, as noted above, plaintiff has valued the relief of declaration [the two declaration as sought in prayer (i) and (ii) are not valued separately] at Rs.200/- and court fees of Rs.20/- is paid.
18. As is evident from the reading of the plaint, plaintiff claims that defendants do not have right, title or interest in the suit property and she is the owner of it. She also claims that D-1 was her tenant simpliciter and had no right to sell 60 square yards of her property to D-3/D-4.
19. In effect, she is *inter alia* seeking the declaration of her title with consequential relief of possession from the defendants. I may note that qua D-1 and D-2, plaintiff has premised her plea of

possession on two grounds. The first ground is based on the plea that D-1 was a tenant in the suit property and therefore, D-1 and his wife/D-2 should be evicted. The second ground contained in the plaint is that even if the plea of landlord/tenant does not succeed, plaintiff is still entitled to possession from D-1/D-2 (to the extent of 60 square yards) on the ground that she is the owner of the property.

20. With respect to D-3 and D-4, relief of possession (to the extent of other 60 square yards) is premised solely on the ground that plaintiff is owner of the property.

21. Thus, as far as the prayer of declaration of title against all the defendants and the relief of possession against them (on the premise of title of plaintiff) is concerned, the said relief of declaration and consequential possession is essentially a relief of declaration with consequential relief of possession which is covered by section 7 (iv) (c) of Court Fees Act, 1870 (for the purposes of valuation for payment of court fees) and plaintiff is required to pay *ad valorem* court fees for the said relief.

22. Again, for the purposes of pecuniary jurisdiction of court, valuation of the said relief, as per section 8 of Suit Valuation Act, 1887, is to be the same as determined for computation of court fees. **In other words, the relief of declaration and consequential**

relief of possession shall have same valuation for court fees as well as for jurisdiction of court.

23. Further still, under Rule 8 contained in part A, Chapter 3 of Delhi High Court Rules (framed for the purpose of valuation of suits), a table is provided for showing value of different classes of suits for the purposes of jurisdiction and court fees including for cases covered by section 7 (iv) (c) of Court Fees Act, 1870. As per the relevant entry in the said table, it is laid that the suits covered under the aforesaid provision, *ad valorem* court fees has to be paid on the amount or relief sought as valued and stated in the plaint. Provided that minimum court fees shall be Rs.13/- and provided further that when relief sought is with reference to property such valuation shall not be less than the value of the property calculated in the manner provided in section 7 (v), Court Fees Act, 1870.

24. Thus, as per the said entry, in cases where the relief is qua a property (which in this case is admittedly a residential house), the valuation shall not be less than the value of the property as provided in section 7 (v) of the Court Fees Act, 1870. Now, section 7 (v) (e) of Court Fees Act, 1870 inter alia lays that where the subject matter is a house, the valuation has to be according to the market value of the house.

25. Thus, in sum and substance, the valuation for the relief of declaration and consequentially for possession of the suit property for the purposes of court fees and for the purposes of pecuniary jurisdiction of court shall have to be **according to the market value of the property in dispute and both the valuations shall have to be the same.**

26. But, in this case, plaintiff has placed a valuation of Rs.200/- to the relief of declaration and paid a court fees of Rs.20/- thereupon. This is grossly under-valued and is against the provisions discussed above.

27. At this stage, I may note that even though, plaintiff has valued his relief of possession qua all the defendants [contained in prayer (iii)] by treating it as a simple suit for landlord-tenant dispute, the same is evidently incorrect. This is because, admittedly, D-3 and D-4 were never tenants of the plaintiffs and thus, there cannot be any relationship of landlord-tenant between them. The relief of possession (to the extent of 60 square yards of land) from D-3 and D-4 is premised on the ground that the plaintiff is the owner of suit property and thus, the relief of possession of 60 square yards of land sought from D-3 and D-4 could not have been valued in the manner done by the plaintiff. The relief of possession sought from them is a consequential relief of declaration of title and should have been valued in the manner indicated above.

28. Again, plaintiff by way of clever drafting has mixed two separate cause of actions qua D-1 and D-2. On one hand, plaintiff claims that D-1 is the tenant, on the other hand, he goes on to claim that D-1 is claiming ownership of his property and thereafter has sold the property to D-3 and D-4. In other words, plaintiff not only wants to premise his case against D-1 and D-2 on landlord-tenant relationship, he also wants to take an alternative plea against them on the basis of her title.

29. Now, if the claim of plaintiff with respect to landlord-tenant relationship fails, she would obviously revert back to her plea that she is owner of property, is thus, entitled to recover possession from D-1 and D-2 (to the extent of 60 square yards of land) based on title. Thus, for such plea i.e. the relief of declaration of title and possession (based on plea of ownership) shall have to be valued at market value of the property and *ad valorem* court fees shall have to be paid as the said plea of declaration with consequential relief of possession shall be covered u/s 7 (iv) (c) of the Court Fees Act r/w section 8 of Suit Valuation Act r/w relevant entry of the table referred in the previous part of this order.

30. On both counts i.e. qua D-1 and D-2 on one hand and qua D-3 and D-4 on the other hand, plaintiff has grossly undervalued her relief of declaration of title and consequential relief of possession.

31. Accordingly, the present application is disposed of with one opportunity to the plaintiff to properly value her relief of declaration and possession at market value of the suit property, both for the purposes of court fees as well as for pecuniary jurisdiction of this court.
32. She is also directed to then pay *ad valorem* court fees thereafter.
33. The said opportunity be treated as an opportunity given u/O VII Rule 11 (b) & (c) CPC. Needless to say that in case plaintiff fails to take steps in this regard, her plaint may be liable to be rejected in terms of the said provisions.
34. Four weeks time is granted to plaintiff to comply with the said directions.
35. To come up on 24.03.2025.

Announced in the
open Court on 30.01.2025

Aashish Gupta
District Judge-01, North-East District,
Karkardooma Courts, Delhi