

07.08.2024

Present:     Ld. counsel for plaintiff.  
              Ld. counsel for D-1.  
              None for D-2 and D-3.

1. Counsel for plaintiff submits that he does not wish to file any reply to the application moved by D-1 u/O VII Rule 11 CPC. With the consent of parties, the said application is taken up for arguments.
2. It is alleged in the application that since the present suit was filed u/s 6 of Specific Relief Act on 03.05.2023 and since as per para 14 of the plaint, plaintiffs that the cause of action to file the present suit “firstly arose on 03.07.2020”, therefore, the present suit is beyond the period of six months provided under the aforesaid provision. On this short ground, rejection of plaint is prayed.
3. Per contra, counsel for plaintiff argued that if one reads the entire plaint, particularly para 10 of the plaint, it shall be evident that as per the plaintiff, the physical possession of the suit property was taken by D-1 in and around December 2022. The suit in question was filed on 03.05.2023 which is within six months thereafter. Thus, he submits that the application seeking rejection of plaint is merit-less and should be dismissed.
4. It is settled law that while deciding an application u/O VII Rule 11 CPC, only the plaint along with documents can be read. There appears to be some contradictions in para 10 and para 14 of the plaint because on one hand in para 10 of the plaint, plaintiff claims that his

locks of the suit property were broken around December 2022; in para 14 the first cause of action for the present suit is stated to have arisen on 03.07.2020. But, if I take a holistic view of the plaint, it appears that there is some typographical error in para 14 of the plaint because as per para 10 of the plaint the suit property was purportedly trespassed by the defendant (who appears to be defendant no. 1) and the locks of the plaintiff were purportedly broken in December 2022. These facts are also mentioned in para 14 of the plaint and no such incident of trespass/breaking of locks appears to have taken place (as per holistic reading of plaint) on 03.07.2020. Thus, if I consider the period of limitation from December 2022, the present suit is within limitation and therefore, the application of D-1 is without merit.

5. Accordingly, the said application is dismissed.
6. At this stage, counsel for plaintiff presses his application u/O XXXIX Rule 1 & 2 CPC. Counsel for defendant seeks some time to address arguments on the said application.
7. Arguments on behalf of plaintiff heard. Counsel for D-1 is at liberty to address arguments on the said application in post-lunch session.

AASHISH GUPTA  
DJ-01/NE/KKD/DELHI  
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In post-lunch session

Present : None.

8. It is already 4.00 pm. None has appeared on behalf of D-1 to address arguments on behalf of D-1 on application u/O XXXIX Rule 1 & 2

CPC. Arguments on behalf of plaintiff were heard in the pre-lunch session. I am not inclined to wait any further for D-1 to address arguments on the present application and thus, I proceed to decide the said application on merits.

9. Plaintiff is claiming title to the suit property through his wife (since deceased) who was holding a registered sale deed in her favour. Thereafter, as per plaintiff, vide a registered Will of his wife in his favour, he became the owner of the property. It is his case that suit property (described in para 2 of the plaint) was purchased from D-2 and D-3 (though wrongly mentioned as D-1 and D-2 in para 3 of the plaint) by his wife who gave possession of the shop to his wife on 03.07.2020. Thereafter, as per plaintiff, some time in December 2022, D-1 trespassed into the suit property by breaking open the locks of the suit property/shop.
10. Thus, the plaintiff is before this court inter alia seeking recovery of possession. In the interim, plaintiff apprehends that the defendants may create third party interest in the suit property or change physical structure of the suit property or part with possession of the same and hence the present application.
11. D-2 and D-3 have supported the case of plaintiff in their WS to the extent that they claim that the suit property was indeed sold and given possession to the wife of plaintiff and as per them they are the executants of the registered sale deed relied upon by the plaintiff.
12. The only contesting defendant i.e. D-1 claims that she is the owner of the suit property and occupies the same in that capacity. It is her case that the suit property is the ancestral property of D-1 which is

recorded in the name of the father-in-law of D-1 and forms part of khasra no. 24, Village Mirpur Turk. She denies the allegation of any trespass and as per her the sale deed dated 03.07.2020 is a forged document.

13. In the reply to the present application, she has reiterated the aforesaid facts and claims that the allegations of the plaintiff to the effect that he was dispossessed from the possession of the suit property is incorrect. She has thus, prayed for dismissal of the present application.

14. As per record, plaintiff has placed on record a copy of registered sale deed dated 03.07.2020 executed by D-2 and D-3 in favour of wife of plaintiff. As per the said document, wife of plaintiff is the registered owner of suit property. Again, plaintiff has also filed copy of a registered Will dated 14.12.2020 as per which wife of plaintiff has given the suit property to the plaintiff.

15. Thus, as per the said documents, prima facie, plaintiff appears to be the owner of suit property and as per recitals of the said documents, plaintiff had the possession of the said property.

16. Plaintiff has also filed on record copy of a police complaint dated 11.12.2022 as per which a police complaint was made against D-1 for illegal encroachment/activities in front of the shop in question.

17. On the other hand, save and except a bald assertion of D-1 that she is the owner of the suit property, no documents in support of the said claim have been filed by her. Even though, D-1 has placed on record certain electricity bills to show her possession in October 2023 and January 2024, there is no document on record to show her title.

18. This is a suit inter alia u/s 6 of Specific Relief Act and therefore, question of title is not required to be gone into by the court. Still, plaintiff has shown documents qua title which also support his claim of possession over the suit property which he claims was taken over in December 2022.
19. In my opinion, plaintiff has been able to prima facie show that he was in possession of the suit property some time in December 2022. Whether this fact is actually correct or not shall have to be decided at trial but, based on a prima facie view, the suit property appears to have been in possession of plaintiff in December 2022. Considering the rival pleas of the parties, even balance of convenience lies in favour of the plaintiff.
20. Plaintiff has specifically alleged that defendant is trying to create third party interest in the suit property and is also changing the physical structure of the same. He also alleges that defendant is also trying to part with the possession of the suit property. In case no injunction is granted in favour of plaintiff at this stage, the loss suffered by the plaintiff may not be compensated in terms of money.
21. Thus, in my humble opinion, the present application is liable to succeed and accordingly, defendant no. 1 is restrained from creating any third party interest in suit property as described in para 2 of the plaint. D-1 is further restrained from parting with possession of the suit property or changing the physical structure of the suit property which exists as on date.
22. Since as per plaintiff, D-2 and D-3 have already sold the suit property to plaintiff's wife and there is no averment alleging

anything qua the said defendants, the aforesaid injunction order is not passed qua the said defendants i.e. D-2 and D-2.

23. Application under Order XXXIX Rule 1 & 2 CPC is disposed off. Nothing stated in this order shall tantamount to any expression on the merits of the case.

24. To come up for admission/denial and framing of issues on 08.10.2024. *Dasti* be given to the parties.

AASHISH GUPTA  
DJ-01/NE/KKD/DELHI  
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