

04.01.2025

Present: Sh. Jagdish Chandra and Ms. Rishita Rawat, Ld. Counsel
for plaintiff.
Ld. Counsel for defendants.

1. Arguments on application U/O VII Rule 11 CPC (moved by D-1) and U/O I Rule 10 CPC (moved by D-2 praying for deletion of his name) heard.
2. Reply to the application of D-1 was filed by plaintiff on 06.12.2024 and to the application of D-2 was filed today. Copy already supplied.
3. As far as the application U/O VII Rule 11 CPC is concerned, it is the case of D-1 that owing to her matrimonial disputes with son of plaintiff, she had preferred some criminal proceedings against plaintiff's son alongwith plaintiff. Even though plaintiff was acquitted or not summoned in the said criminal proceedings, the said proceedings have not attained finality as appeal is pending against the said proceedings. Thus, it is the argument of D-1/applicant that the present suit for the tort of malicious prosecution is without cause of action and therefore should be dismissed. It is also her case that the suit is barred by limitation.
4. The application is resisted by Counsel for plaintiff who argues that till recently plaintiff was sought to be summoned as an accused in Ghaziabad Court by D-1 and it was on 01.01.2024 that the case of D-1 was dismissed. Thus, as per plaintiff, this gave a cause of action to the plaintiff to sue the defendants (including D-1) for damages.

5. It is settled law that while deciding an application U/O VII Rule 11 CPC, only the plaint/the documents annexed are to be read. The present suit was filed in June 2024 and as per the plaint, D-1's attempt to get summoning of plaintiff in a criminal case in Ghaziabad failed recently in January 2024. Now, if so considered, the cause of action for malicious prosecution qua the said case is within the limitation of one year (see Article 74 of Limitation Act 1963). Only because D-1 has preferred an appeal against dismissal of her complaint cannot mean that plaintiff cannot sue her for malicious prosecution.
6. Even otherwise, plaintiff has alleged that D-1 has filed various criminal cases against her and thus, if I treat the contents of plaint as gospel truth (for the purposes of the present application), the plaint cannot be said to not to disclose a cause of action against D-1.
7. Thus, neither on the ground of limitation nor on the ground of non-disclosure of cause of action can the present suit be dismissed. If that be the case, the present application is misconceived. It is accordingly dismissed.
8. This brings me to the other application U/O I Rule 10 CPC whereby D-2 is seeking deletion of his name from the array of parties.
9. It is the case of the applicant/D-2 that nothing has been stated in the plaint against him which may give a cause to the plaintiff to sue him for damages and thus, he is not a necessary party to the present suit.
10. Per contra, Counsel for plaintiff argued that D-1 is the sister of D-2 and she is living with D-2 and thereafter, filing cases against plaintiff and her family from Ghaziabad. It is also his case that D-2 had also appeared as a witness of D-1 in a case U/S 498A/406 IPC and had given false evidence against plaintiff and her family. This, as per Counsel for plaintiff, gives a cause to plaintiff to sue D-2.

11. A perusal of plaint would show that evidently no case appears to have been filed by D-2 against the plaintiff. It is only alleged that D-1 is under the influence of D-2 (who is her brother). The testimony referred to by Counsel for plaintiff during arguments is not part of record and the said case admittedly resulted in acquittal of plaintiff in 2018. Now, if the said case was admittedly not initiated by D-2 and has already resulted in acquittal of plaintiff in 2018 itself, there appears to be no reason why D-2 is made a party in this suit. No answer was forthcoming during arguments to pin point the cause which plaintiff has against D-2.
12. Considering the above, it appears that D-2 is neither a necessary nor a proper party to the present proceedings and is thus, ordered to be deleted from the array of parties.
13. Accordingly, the application of D-2 U/O I Rule 10 CPC is liable to be allowed. It is ordered accordingly.
14. Let plaintiff file an amended memo of parties on or before next date of hearing.
15. List for admission/denial and framing of issues on 13.02.2025.

Aashish Gupta
DJ-01/NE/KKD/DELHI
04.01.2025