

03.02.2024

Present: Sh. V.A. Farooqui, ld. counsel for plaintiff.
Sh. A.K. Pandey & Sh. R.B. Singh, ld. counsel for
defendant.

Heard arguments on the application under Order VII
Rule 11 CPC.

Put up for orders in the post lunch session.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
03.02.2024

In the post-lunch session

Present : None.

Vide this order, I shall dispose off the application under VII Rule 11 CPC moved on behalf of defendant. It is stated by the defendant that the plaintiff has filed the present suit for the relief of possession, declaration, permanent injunction and recovery of user charges for the property no. E-20-5, khasra no.552, Gali no. 8, SubhashVihar, Delhi. It is stated that the corret property no. is E-20/8, khasra no.552, Gali no. 8, Subahsh Vhar, Delhi. It is stated that the above mentioned property was purchased by the defendant from Anju Malik in the year 2021 by virtue of GPA, agreement to sell etc. It is stated that the suit of the plaintiff does not reveal any cause of action against the defendant since the defendant has already purchased the suit property in the year 2021. It is stated that the suit of the plaintiff is for different property.

It is also stated that the plaintiff never came in the possession of the suit property and the documents relied upon by the plaintiff are forged. It is stated that there is no document regarding the demarcation of the property from the MCD as to the identification of the property.

Ld. Counsel for the plaintiff submits that it is the wrong submission of the defendant that the number of suit property is E-20/8, rather the same is E-20/5 and the plaintiff has mentioned correct number in the plaint. It is also stated that the documents in the form of bills from Delhi Jal Board also reveals that the property number is E-20/5. It is further submitted that the defendant is in illegal occupation of the suit property.

Records perused. Arguments heard.

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.

Moreover, the word 'cause of action' has not been statutorily defined. However, it has acquired a judicially settled meaning. Cause of action constitutes the circumstances forming the infraction of the right or the immediate occasion for the action. Cause of action means the bundle of facts, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or tribunal, a group of operative facts giving right to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in court from another person. (**Naveen Chandra N. Majithia Vs. State of Maharashtra**, AIR 2000 SC 2966).

This is the suit filed for the relief of possession and other reliefs wherein the plaintiff claims himself to be the owner of second floor of property no. E-20/5. The plaintiff claimed ownership by stating that he purchased the property in question from Chand Malik against the consideration of Rs.25 lacs. The plaintiff alleges illegal occupation of the defendant in the suit

property. The documents annexed with the plaint reveals the number of the suit property as E-20/5. If the suit property is of the defendant since allegedly purchased by the defendant in the year 2021 or the same bears number E-20/8 or the defendant is the owner of the suit property are the alleged facts constituting defence of defendant but are not coming up from the plaint. The written statement of the defendant and the documents filed along with the written statement cannot be considered while disposing off the present application under Order VII Rule 11 CPC.

As far as the cause of action is concerned, the plaintiff is alleging his ownership rights over the property in question by stating that he purchased the same from its previous owner and also claiming the breach of his rights by stating that the defendant is illegally occupying the property in question. This averment of the plaintiff carves out cause of action in the favour of the plaintiff. In these circumstances, the defence taken by the defendant is completely irrelevant to the present application.

The present application is hereby dismissed being merit-less.

Affidavit as to the admission/denial of documents be filed on NDOH with advance copy to the opposite parties.

Put up for arguments on application under Order XXXIX Rule 1 & 2 CPC, admission/denial of documents and framing of issues on 16.03.2024.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
03.02.2024 sb