

VINOD KAPUR
Vs.
VIJAY KAPUR ORS.

03.10.2024

Present: Mr. B. L. Mehta, Ld. Counsel for plaintiff along with
plaintiff in person.

Mr. Vijay Monga, Ld. Counsel for defendant no. 1 along
with defendant no. 1 in person.

Mr. Shagun Mehta, Ld. Counsel for defendant no. 2 and 3
along with defendant no. 2 and 3.

ORDER

1. Ld. Counsel for defendant no. 1 has moved an application under
under Section 151 CPC to seek correction in the application under
Order 7 Rule 11 CPC. Although, this application for seeking correction
is opposed by the plaintiff on the ground that the affidavit and
verification clause bears different dates and there is no typographical
error in the address stated by the defendant no. 1, however, in the
interest of justice, the court allows the application of the defendant no. 1
u/s 151 CPC for correction of the application under Order 7 Rule 11
CPC.

2. Arguments heard on the application of defendant no. 1 under
Order 7 Rule 11 CPC.

3. Be put up for order on the aforesaid application at 4:00 PM.

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At 4:00 PM.

Present: None.

ORDER

1. Vide this order, I shall dispose off the application of the defendant no. 1 under Order 7 Rule 11 CPC.
2. Ld. Counsel for defendant no. 1 has filed the present application on the following grounds:-

(a) That the suit of the plaintiff does not disclose a cause of action as the plaintiff has no share in the suit property. It is submitted that the plaintiff has already surrendered his share in the suit property in the year 1987/88 and is residing separately.

(b) That the suit property, being a leasehold property in the joint name of Late Sh. Mohinder Singh and Late Sh. Parma Nand, is not capable of being partitioned by virtue of conditions incorporated in the lease deed.

(c) That the suit property is not further sub-divided between Late Sh. Mohinder Singh and Late Sh. Parma Nand. Therefore, the legal heirs of Sh. Nand Lal Kapur (father of plaintiff and defendants herein and one of the son of Late Sh. Parma Nand) cannot claim a share in the suit property unless all the necessary parties are joined in the suit. It is stated that one of the son of Late Sh. Parma Nand, namely, Sh. Gulshan Kapur had applied to be impleaded as a party in the present under Order 1 Rule 10 CPC. However, his application was dismissed vide order dated 15.09.2022. Due to which, Late Sh. Gulshan Kapur was

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constrained to file a suit for partition against the plaintiff and the defendants herein.

3. *Per contra*, Ld. Counsel for plaintiff in his reply has stated that the present application is filed to delay the present matter. It is stated that the application of the Late Sh. Gulshan Kapoor was dismissed vide speaking order dated 15.09.2022 and have remained unchallenged. It is also stated that the defendant no. 1 had filed an application under Order 6 Rule 17 CPC for amendment of his WS, however, vide speaking order dated 07.03.2014, the said application was dismissed. No appeal was preferred against the said order. It is stated that the present application is false and frivolous and is liable to be dismissed.
4. Heard. Record perused.
5. The brief facts of the case of the plaintiff are that the plaintiff is one of the co-owner in the property bearing no. A/29-B (pvt) (area about 68 sq. yards), bearing original no. A/29, Vijay Nagar, Single Story, Delhi-110009 (hereinafter referred to as “*suit property*”). It is averred by the plaintiff that the suit property is in the name of his grandfather, Late Sh. Parma Nand Kapur along with Late Sh. Mohinder Singh. The total suit property admeasured 128 sq. yards. Late Sh. Parma Nand had three sons and one daughter, namely, Sh. Faqir Chand, Sh. Nand Lal, Sh. Gulshan and Smt. Darshan. It is stated that Late Sh. Parma Nand had compensated all his other sons in other properties, whereas out of this property, he had given 60 sq. yards to his son, Sh.

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Gulshan and about 68 sq. yards bearing private no. A/29-B to Sh. Nand Lal (father of the plaintiff and defendant no. 1 to 3 herein). It is stated that the plaintiff is a co-owner in the said property as per the family settlement that was arrived between the plaintiff and defendant no. 1 to 3 upon mutual understanding for attaining cordial relations between them. It was agreed between them that the four brothers i.e. plaintiff and defendant no. 1 to 3 shall share one floor each, while the mother i.e. defendant no. 4 shall live in the ground floor / first floor. It is stated that the defendant no. 1 on 02.10.2010 with malafide motive, got the possession of the third floor, which fell in the share of the plaintiff and therefore, the present suit is filed for seeking partition of the suit property. It is also stated that defendant no. 2, 3 and 4 are supporting the case of the plaintiff.

6. Although, it is a settled law that at the time of deciding an application for rejection of plaint, only the suit of the plaintiff has to be seen, however, in the instant case, certain admissions are made on behalf of the defendant no. 1, which are crucial to determine the true factual situation. The defendant no. 1 in para no. 5 of the preliminary objections has stated as under:-

“.....5. That the plaintiff has not come before this Hon’ble Court with clean hands and he has willfully and intentionally concealed material true facts from this Hon’ble Court. It is submitted that the father of the plaintiff and defendants no. 1 to 3 was the owner of the suit property having been purchased by grandfather namely, Shri Parma Nand Kapur and the sale consideration was adjusted out of sanctioned claim in respect of properties left by him which were ancestral, in Pakistan after partition of India in the year August, 1947 and migrated to India and Ministry of Rehabilitation constructed the properties for residential

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purposes for the refugees who migrated from Pakistan to India and the suit property was initially allotted to one Shri Mohinder Singh who transferred the property to grandfather of plaintiff and defendant no. 1 to 3 and was inherited by Shri Nandlal Kapur and his brother Shri Gulshan and father of plaintiff and father of defendant no. 1 to 3 in settlement gave a portion of property measuring 60 sq. yds. To his brother to satisfy his interest and claim and has been enjoying the said portion and for residence requirement, existing structure was demolished and new building was constructed consisting of Ground Floor, first floor and second floor alongwith one room on Terrace and major portion of amount was spent by the answering defendant so he was allocated by father of plaintiff and defendant the second floor portion alongwith Terrace over the second floor including room having as best to sheets roof to answering defendant while ground floor is in occupation of Vipin Kapur and Shri Vinay Kapur is in occupation of first floor after reconstruction of suit property. The plaintiff was having love affairs and the answering defendant being elder brother and father of plaintiff and defendant no. 1 to 3 solemnised the marriage of plaintiff by spending huge amount and father of plaintiff and defendant no. 1 to 3 satisfied the all claims, interests of plaintiff in the suit property and he cased to claim any right or share in the suit property and has been residing at the address given in the title separately from the defendant since 1988 and has not raised any claim of any nature over the suit property from 1988 and / or after the death of Shri Nand Lal Kapur who died on 31.03.1993 till filing of the present suit. He has filed the present suit dishonestly to fulfill his lust and agrees of money to extort from the answering defendant, thus whole suit of the plaintiff is based on concocted facts which has no value in the eyes of law, thus, the plaintiff is guilty of suppressing and concealing material true facts from this Hon'ble Court as such the suit of the plaintiff devoid of any substance, merits dismissal with heavy cost.....”

7. On perusal of para no. 5 of the WS of defendant no. 1, it is evident that as per the own admission of defendant no. 1, the suit property was although initially allotted to one Sh. Mohinder Singh but subsequently, he transferred the property to the grandfather of the plaintiff and defendant no. 1 to 3 i.e. Sh. Parma Nand Kapur, from whom, the father of the plaintiff and defendant

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no. 1 to 3 i.e. Sh. Nand Lal Kapur along with his brother namely, Sh. Gulshan had inherited 68 sq. yards and 60 sq. yards, respectively. It is further admitted by the defendant no. 1 that his father allocated the suit property, after a new building was constructed thereupon, between the defendant no. 1 to 3. The only dispute is that the plaintiff was not given any share in the said property and he had surrendered his share on account of expenses incurred by defendant no. 1.

8. Thus, at this stage, this court is not inclined to reject the plaint of the plaintiff on the grounds agitated by the defendant no. 1. Misjoinder and non-joinder of parties is not a ground for rejection of plaint. Also, the other issues raised by the defendant no. 1 are triable in nature and cannot be a ground for rejection of plaint. Accordingly, the present application of the defendant no. 1 under Order 7 Rule 11 CPC stands dismissed.
9. Be put up for arguments on the application of the plaintiff under Order 12 Rule 6 CPC on **10.01.2025**.

Shivali Bansal
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