

**IN THE COURT OF SH. KISHOR KUMAR, ADDITIONAL
DISTRICT JUDGE-04, NORTH DISTRICT, ROHINI
COURTS, DELHI.**

CS No. 39/2022
CNR No: DLNT01-000318-2022

Jagveer Singh

..... Plaintiff

VERSUS

Narender Kumar & Ors.

.....Defendants

Order/30.01.2024

1. Vide this order I shall dispose of the application under Order VII Rule 11 CPC, moved on behalf of defendant no.1 as well as the pleas taken by defendant/DDA on the point of maintainability of present suit.

2. Plaintiff has filed the present suit for possession, permanent and mandatory injunction and damages with respect to the suit property I.e property bearing plot of land area measuring 240 sq yds (size 36'' x 60'' feet), comprising Khasra No.17/25 of revenue estate of village Libaspur, Delhi, colony known as Saroop Nagar, Main Burari Road, Delhi-110042.

3. It is contended on behalf of defendant/DDA that suit of the plaintiff is not maintainable under Order VII Rule 11 CPC as the same has been filed without any cause of action since neither the plaintiff nor the defendant or any other person has the ownership rights over the suit property. The ownership in the suit property belongs exclusively to the defendant/DDA. The alleged documents are result of fraud and forgery being played by the alleged executants over the government land.

4. It is contended on behalf of defendant no.1 that plaintiff nowhere mentioned in the plaint that he was in actual physical possession of the suit property and the electricity bills which are filed by the plaintiff belongs to K-Block, Gali No.16, Swaroop Nagar, Delhi. The plaintiff has filed the site plan of property belongs to defendant no.1. It is further stated that as per documents of the plaintiff measurement of the plot is 240 sq yds and in the east side of the plot is Main Burari Road while actually and as per the documents of the defendant no.1 measurement of the plot is 276 sq yds and in the south side of the plot is Main Burari Road. It is further stated that the documents on which plaintiff is claiming belong to another property and not to suit property. It is further submitted on behalf of defendant no.1 that in view of all these facts and circumstances, no cause of action was/is ever arose in favour of the plaintiff.

5. Per contra, it is contended on behalf of plaintiff that plaintiff is the owner of suit property, having purchased the same from Sh. Jai Pal Singh by way of documents i.e. GPA, Sale Agreement, Affidavit, Receipt, Possession Letter and Will, all dated 16.11.2009 and got transfer electricity connection in his name by submitting his property documents. It is further stated that on 09.07.2021, defendant no.1 illegally and unlawfully constructed the suit property by taking vacant possession of the suit property and when plaintiff tried to stop illegal construction, defendant no.1 refused to stop construction. It is further contended on behalf of plaintiff that complaints were made to defendant no.2 and 3, but no action has been taken.

6. I have heard the learned counsel for the parties and have carefully gone through the material available on record.

7. It is a settled proposition of law that while considering application under Order VII Rule 11 CPC only the contents mentioned in the plaint are to be seen.

8. The main ground taken by the defendant/DDA in its written statement is that plaintiff has no cause of action for filing the present suit stating that neither the plaintiff nor the defendant is the owner of the suit property and the suit property belongs to the DDA only. Defendant no.1, in his application under Order VII Rule 11 CPC, has also contended that there is no cause of

action in favour of plaintiff since the documents relied upon by plaintiff do not belong to suit property.

9. The term cause of action refers to a set of facts or allegations that make up the grounds for filing a lawsuit. These are essential facts constituting the right and its infringement which entitles a person to sue the wrong doer or defaulter or any one liable for it. The plaintiff must have to prima facie convince the court as to the existence of the facts relating to cause of action for the court to proceed with the suit. A bare perusal of the plaint shows that the averments made in the plaint do show a cause of action and it cannot be said that there is no cause of action in favour of plaintiff and against the defendants.

10. Recently Hon'ble Supreme Court in **Keshav Sood Vs. Kirti Pradeep Sood, in Civil Appeal No.5841 of 2023**, observed that *"As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application"*

11. The contentions raised by the defendant/DDA in its written statement regarding the maintainability of present suit and the pleas made on behalf of the plaintiff are required to be

proved by leading cogent evidence in this regard by both the parties. Similarly, the objections raised on behalf of defendant no.1 with regard to area and directions of the property in question also required to be proved by leading cogent evidence. In these circumstances, the grounds taken by the defendant/DDA in its written statement and the objections taken by defendant no.1 in the written statement do not cover under the provisions of Order VII Rule 11 CPC. Even otherwise, as stated above, at the time of considering maintainability of a suit under Order VII Rule 11 CPC, the contents as contained in the plaint are to be seen only.

12. In view of my above discussion, it cannot be said at this stage that suit of the plaintiff is not maintainable and plaintiff has no cause of action in his favour and, accordingly, objections raised by defendant/DDA as well as defendant no.1 under Order VII Rule 11 CPC stand dismissed.

Announced in Open Court

On Dated 30.01.2024.

(Kishor Kumar)
ADJ-04, North, Rohini Courts,
Delhi/30.01.2024