

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

CS No. 213/2022
CNR No: DLNT01-002123-2022

Hari Chand & Ors.

..... Plaintiffs

VERSUS

Satish Kumar

.....Defendant

Order/04.04.2024

1. Vide this order I shall dispose of the application under Order VII Rule 11 CPC, filed on behalf of the defendant.
2. Plaintiff has filed the present suit for possession, declaration, rendition of accounts, mandatory and permanent injunction stating inter alia that plaintiff no.1 purchased the property i.e. built up house bearing Khasra No.23/18/47, land area measuring 100 sq yds., situated in Gram Sabha of Village Mungeshpur, Delhi-110039 in the name of his wife from Sh. Rajbir. Smt. Suresh Bala expired on 15.06.2007. Suit property is situated near parental house of deceased wife of plaintiff no.1

and as such the title documents always remained with the parental family of Smt. Suresh Bala and the defendant who is real brother of Smt. Suresh Bala including other family members assured that they will look after the suit property. In the first week of January, 2022, the plaintiff went to the suit property and surprised to see that the suit property is occupied by different tenants who informed that defendant had let out the suit property to them. Plaintiff no.1 contacted the defendant who informed that he has now become owner of suit property on the basis of documents executed by his sister i.e. wife of plaintiff.

3. In the present application, it is stated by the defendant that the plaintiff no.2 to 5 have not verified and signed the plaint, there is no cause of action in favour of the plaintiff, there is no privity of contract between the plaintiff and the defendant, plaintiff has no locus standi for filing the present suit, suit of the plaintiff is undervalued and that suit is barred by limitation.

4. The plaintiff, in reply to the present application, has denied the grounds taken by defendant being wrong and incorrect. Ld. Counsel for the plaintiff has prayed for dismissal of present application with cost.

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

6. 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.

7. The main ground taken by the defendant in the present application is that plaintiffs have no cause of action for filing the present suit stating that there is no privity of contract between the plaintiff and the defendant and further that suit of the plaintiff is undervalued and barred by limitation.

8. 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 plaintiffs and against the defendant.

9. 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”

10. Perusal of record shows that it is not disputed on the part of defendant that plaintiff no.1 is husband of late Smt. Suresh Bala, who is real sister of defendant. It is also not disputed on the part of defendant that Smt. Suresh Bala was the owner of suit property. In these circumstances, it cannot be said that there is no privity of contract between the parties or the plaintiff has no locus standi to file the present suit. Plaintiff has also affixed the court fee as per relief prayed in the plaint. So far as the point of limitation is concerned, it is a question of law and fact and can be decided at the stage of final arguments. Further, issues in the present case have already been framed including the specific issue with regard to cause of action.

11. The contentions raised by the defendant by way of present application and the pleas made on behalf of the plaintiffs are required to be proved by leading cogent evidence in this regard by both the parties and the grounds taken by the defendant by way of present application are not sufficient to reject the plaint under Order VII Rule 11 CPC.

12. In view of my above discussion, the present application under Order VII Rule 11 CPC, filed on behalf of the defendant, is hereby dismissed.

Announced in Open Court

On Dated 04.04.2024.

(Kishor Kumar)
ADJ-04, North, Rohini Courts,
Delhi/04.04.2024