

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-02:
NORTH ROHINI COURTS COMPLEX: DELHI**

IN THE MATTER OF:-

CS DJ 197/21

CHARAN SINGH & ORS. VS. SHILPA JAIN & ORS.

15.04.2023

ORDER ON APPLICATIONS

1. Vide this common order, I shall dispose of the application u/o VII Rule 11 of the CPC for rejection of the plaint, filed by the defendants no. 1 no. 2 and the application under Order VI Rule 17 of the CPC filed by the plaintiff.
2. The defendants, in the application under Order VII Rule 11 of the CPC has stated that the present suit for permanent injunction simplicitor without seeking the consequential relief of possession is not maintainable. It has been further stated that the plaintiffs have also suppressed the facts that the suit property is measuring 44.23 sq. yards and not 85 sq. yards. It is further stated that the plaintiffs have not valued the present suit correctly for the purposes of court fees and jurisdiction. It has been further stated that the defendant no. 1 is the exclusive owner and in possession of the property bearing no. 76/A, area measuring 44.23 sq. yards out of Khasra No. 80, main market, Samaypur, Delhi, which has been purchased by her from Sh. Anand Kumar, who has not been arrayed as a party in the present suit. It has been prayed that the plaint of the plaintiff be rejected under Order VII Rule 11 of the CPC.

3. Reply has been filed by the plaintiffs to the abovesaid application of the defendants no. 1 and 2 stating herein that the present application filed by the plaintiffs is without any cause of action. It has been further stated that the plaintiffs have already filed on record an application under Order VI Rule 17 of the CPC, which is pending adjudication before this Court. It has been further stated that for the first time, the defendants no. 1 and 2 filed the alleged documents of title alongwith the written statement and as such the application under order VI Rule 17 of the CPC has been filed. It has been prayed that the application of the defendants no. 1 and 2 under Order VII Rule 11 of the CPC be dismissed.
4. Now, coming to the application of plaintiffs under Order VI Rule 17 of the CPC, the plaintiffs have stated that in their joint written statement, filed by defendants no. 1 and 2, it has been claimed that defendant no. 1 has purchased 44.23 sq. yards out of the suit property from Sh. Anand Kumar after paying the sale consideration of Rs. 4 Lacs. It has been further stated that the defendants no. 1 and 2 have further claimed that the sale documents such as the GPA, Agreement to Sell, Possession Letter and Receipt, all dated 28.12.2020 were executed in favour of defendant no. 1. It has been further stated that the defendants no. 1 and 2 have also filed another set of the GPA and Will, both dated 28.12.2020.
5. The plaintiffs, in their application under Order VI Rule 17 of the CPC have further stated that defendant no. 3 has also filed the written statement categorically denying the sale of the suit property to anyone.

It has been further stated that the defendant no. 3 has further admitted that the suit property is an ancestral property which was belonging to his father Late Sh. Tula Ram and in his lifetime, Late Sh. Tula Ram used to collect the rent from different tenants. It has been further stated that thus the plaintiffs want to amend the subject matter of the suit from that of Permanent Injunction to a suit for Declaration, Cancellation and Permanent Injunction. The plaintiffs have also sought for the consequential reliefs in the body of the claim. The plaintiffs have valued the present suit for pecuniary jurisdiction at Rs. 4 Lacs and have paid the court fees of Rs. 6250/- thereon.

6. In the reply to the abovesaid application under Order VI Rule 17 of the CPC, filed by the defendants no. 1 and 2, it has been stated that the present application has been filed by the plaintiffs only with a view to fill up the lacunae demonstrated by the defendants in their written statement. It has been further stated that the present application is an afterthought and why the plaintiffs failed to seek the amendments earlier. It has been prayed that the present application filed by the plaintiffs be dismissed.
7. I have carefully gone through the entire material available on record and heard the rival submissions of both the Ld. Counsels for the parties.
8. Before discussing the abovesaid applications on merits, it becomes imperative to have a glance at the pleadings of the parties.
9. The plaintiffs have instituted the present suit for Permanent Injunction simplicitor against the defendants on the ground that the deceased

Sh. Tula Ram, who expired in the year 2007, was having three sons, namely, Sh. Charan Singh (Plaintiff no. 1 herein), Sh. Ram Singh (Pre-deceased son of Sh. Tula Ram and father of plaintiff no. 2), Sh. Kartar Singh (Defendant no. 3 herein) and two daughters, namely, Smt. Charono Devi (Plaintiff no. 3 herein) and Smt. Sheela (Pre-deceased daughter of Sh. Tula Ram, Plaintiff no. 4 herein through her legal heirs). It has been further stated that after the death of Sh. Tula Ram, the abovesaid legal heirs are having 1/5th share each in the property bearing no. 76, Main Market, Samaypur, Delhi measuring 85 sq. yards which was being owned by Late Sh. Tula Ram. It has been stated by the defendants that on 14.03.2021, the defendants no. 1 and 2 demolished some portion of the suit property with the intention to rebuild the same and on enquiry, they stated that they had purchased the suit property from defendants no. 3 to 5. It has been further stated that defendant no. 1 and 2 refused to show any documents of ownership to the plaintiffs. It has been further stated that Sh. Tula Ram died *intestate* and as such, the plaintiffs have become the joint owner of the suit property having 1/5th share each.

10. In the joint written statement, filed by defendants no. 1 and 2, it has been stated that the suit property measuring 44.23 sq. yards and not 85 sq. yards and the suit property was falling in the share of Sh. Kartar Singh (Defendant no. 3 hererin). It has been further stated that the defendant no. 1 is the exclusive owner and in possession of the property bearing no. 76/A, area measuring 44.23 sq. yards out of

Khasra No. 82, Main Market, Samaypur, Delhi after purchasing the same from Sh. Anand Kumar.

11. Written statement has been filed from Sh. Kartar Singh stating herein that the suit property is an ancestral property and he is having 1/5th share in the suit property measuring approx. 84 sq. yards. The defendant no. 3 has taken the stand that he has never sold the suit property to anyone and in the intervening period of December, 2019 to January, 2020, the defendants no 4 and 5 had taken the defendant no. 3 to some unknown place and they took the signatures of defendant no. 3 on various printed papers and blank papers as well on the pretext that the same were required for applying the water connection.
12. In the light of the abovesaid pleadings of the parties, now the plaintiffs have claimed that for the first time, the defendants no. 1 and 2 disclosed about the documents i.e. the GPA, Agreement to Sell, Will and Possession Letter etc., all dated 28.12.2020. The plaintiffs want to amend the present suit and want to amend the title of the present suit from that to Permanent Injunction to a suit for Declaration, Cancellation and Permanent Injunction on the basis of the facts which have been disclosed by the defendants in their written statements. The plaintiffs have also valued the present suit at Rs. 4 Lacs on which the court fees of Rs. 6250/- have been paid by the plaintiffs. In the Agreement to Sell dated 28.12.2020 filed by defendants no. 1 and 2, the value of the property has been disclosed as Rs. 4 Lacs.
13. The matter is at the initial stage. Issues are yet to be framed and the trial is yet to commence. As such, I am of the opinion that the present

application filed by the plaintiffs under Order VI Rule 17 of the CPC is liable to be allowed. Accordingly, the application filed by the plaintiffs under Order VI Rule 17 of the CPC is allowed and the amended plaint is taken on record. Consequently, the application of the defendants under Order VII Rule 11 of the CPC is hereby dismissed.

Announced in the open Court.
(Order contains 6 pages)

(Raj Kumar)
Addl. District Judge-02, North
Rohini Court Complex, Rohini
Delhi/15.04.2023.