

10.09.24

Present: Sh. Paras Jain, Ld. Counsel for plaintiff.
Sh. Devender Kumar, Ld. Counsel for defendants
no.1 & 2.

Arguments on application under Order VII Rule 11
CPC heard.

Plaintiff has filed the present suit for recovery of Rs.5,00,000/- along with temporary injunction restraining the defendants from transferring or creating third party interest in movable and immovable assets inherited from Smt. Anita, deceased wife of defendant no.1 and mother of defendant no.2 stating inter alia that parties are known to each other for last ten years and plaintiff gave a sum of Rs.5,00,000/- to Smt. Anita at the interest of two per cent per month for a period of two years against due acknowledgment and a security cheque bearing no.623811 was also issued by Smt. Anita. After expiry of two years, Smt. Anita did not return the said amount despite repeated requests and demands made by the plaintiff and she expired during Covid-19.

By way of present application under Order VII Rule 11 CPC, it is contended on behalf of the defendant that plaintiff failed to mention a single details of the property owned by deceased Anita Rana and inherited by defendants after her death. It is further the contention of defendant that there is no cause of action against the defendants.

Perusal of plaint and the facts as stated above do show that cause of action exist in favour of plaintiff and against the defendants for filing the present suit. Further, 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.*” In view of settled proposition of law as well as the case law, as cited above, the contention raised by defendant that plaintiff has not disclosed the details of property inherited by defendants is a matter of trial and cannot be decided at this stage without giving an opportunity to lead evidence to both the parties. Accordingly, application under Order VII Rule 11 CPC stands disposed of as dismissed.

Ld. Counsel for plaintiff states that he do not want to file any replication.

Pleadings are complete. On the basis of pleadings, following issues are framed for trial :

1. Whether the plaintiff is entitled for recovery of Rs.5,00,000/-, as prayed for ? OPP
2. Whether the plaintiff is entitled for interest, if so, at what rate and for what period ? OPP
3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD
4. Relief.

No other issue arises or is pressed for by the parties.

Let list of witnesses alongwith affidavits of the witnesses be filed by both the parties within 15 days from today with advance copy to the opposite party.

Put up for PE on 26.11.2024.

It is made clear that in case advance copy of affidavit in evidence is not supplied, a cost of Rs.2500/- shall stand imposed upon the plaintiff.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/10.09.24.