

REENA BHARGAVA
Vs.
MADHU BHARGAVA AND ANR

07.10.2023

Present: None.

ORDER

1. Vide this order, I shall dispose off the application of the defendant under Order 7 Rule 11 CPC.
2. Ld. Counsel for the defendant by way of present application has stated that the suit of the plaintiff is liable to be rejected on the following grounds:
 - a) Suit of the plaintiff is barred by limitation as the plaintiff is residing out of the suit property from February 1990, that the relief of possession after expiry of more than 29 years, is not available to the plaintiff.
 - b) On the ground that no specific date of oral partition is mentioned by the plaintiff and the plaintiff has filed the present suit by concealing the relevant documents.
 - c) It is stated that the husband of the plaintiff has already relinquished his share in favour of Sh. Suresh Chand Bhargava, husband of defendant no. 1 on 10.12.1996.
 - d) It is stated that there is serious clouds over the title of the plaintiff and still the plaintiff has not sought any declaration on the title and therefore, the present suit is liable to be rejected.
 - e) That the suit is liable to be rejected for want of cause of action in favour of the plaintiff as she is claiming the right of her

property through her husband and the death of her husband cannot be a cause of action for possession of the property.

f) That the plaintiff has not properly valued the suit property and therefore, the suit is liable to be rejected.

3. *Per contra*, Ld. Counsel for the plaintiff in his reply has negated all the grounds raised by the defendant and has stated that the question of limitation is a mixed question of law and fact and the same cannot be decided at this juncture. It is further stated that the plaintiff has a legal and valid cause of action and he has properly valued the suit property for the purpose of jurisdiction. It is stated that the claim of the plaintiff for herself and for her offspring is based upon the indefeasible and independent right of her deceased husband i.e. Late Sh. Umesh Chand Bhargava.

4. The fact of the present case in brief are as under:

a) That the father in law of the plaintiff namely Late Sh. Ram Gopal Bhargava was residing at H.No. 1, State Bank Colony, G.T. Karnal Road, Delhi till his death on 23.01.1977. It is stated that late Sh. Ram Gopal Bhargava was survived by his widow Smt. Shashi Devi Bhargava, five sons and two daughters, namely Sh. Ramesh Bhargava, Sh. Suresh Bhargava, Sh. Umesh Bhargava, Sh. Rakesh Bhargava, Sh. Dinesh Bhargava, Smt. Shruti Bhargava and Smt. Saroj Bhargava respectively. The plaintiff herein is the wife of late Sh. Umesh Bhargava and defendant no. 1 is the wife of late Sh. Suresh Bhargava and defendant no. 2 is the daughter in law of defendant no. 1.

b) The plaintiff has filed the present suit for possession of immovable property and permanent injunction. It is stated in the

plaint that the suit property was a joint estate of late Ram Gopal Bhargava and his elder son Ramesh Bhargava and the same is a three storey built up house in two parts situated at Plot no. 1, SBI Colony, Delhi. It is further stated that the said plot of land measures approximately 300 sq yards and building erected thereon has two parts, left hand side portion ad-measuring 150 sq yards and the right hand side also ad-measuring 150 sq yards belonging to Ramesh Chand Bhargava. It is further stated that the property was constructed by Late Ram Gopal Bhargava alongwith his three sons including the husband of plaintiff from the funds raised through loans and savings of Smt. Shashi Devi Bhargava (wife of late Ram Gopal Bhargava). It is further stated that since the demise of late Sh. Ram Gopal in the year 1977, the husband of the plaintiff Sh. Umesh Bhargava had repaid the substantial loans. It is further submitted that with passage of time, portion on the right hand side of the suit property was occupied by Ramesh Chand Bhargava, Suresh Bhargava and Dinesh Bhargava and ground floor with 1/4th basement of the left hand side suit property was held by Mr. Rakesh Bhargava, first floor was with Mr. Suresh Bhargava and second floor with terrace with in the possession of Sh. Umesh Bhargava i.e. the husband of plaintiff. It is further stated that after the demise of Sh. Umesh Bhargava, the plaintiff stepped into the shoes of Umesh Bhargava being his legal heir.

c) By way of an amendment application, the plaintiff had amended the suit and had stated that in the year 1996 an oral partition of division of all the portions among all owners / co-

sharers was effected and has also stated that the husband of the plaintiff has signed certain documents under the influence of liquor which were misused. It is further stated that the husband of the plaintiff in February 1990 shifted to his own house in Bank Vihar, Pitampura, Delhi. However, all the four brothers continued to live in the suit property. It is further submitted that the year 1996, the renovation of the suit property was carried out and the husband of the plaintiff constructed his portion on the second floor as only one room was existing on both sides of the property. Thereafter, due to financial crunch, the husband of the plaintiff had sold his own house. After demise of the husband of the plaintiff, the plaintiff and her son demanded back the possession of their share in the suit property from his brothers, to no avail. It is stated that in the year June 2019, plaintiff has heard that the defendant no. 1 and her daughter in law are looking for a prospective buyer to sell and dispose of entire first and second floor, left hand side portion and therefore, the plaintiff has filed the present suit for possession of the left hand side suit property in her favour.

5. Heard. Record perused.
6. It is trite law that at the stage of deciding application under Order 7 Rule 11 CPC, only plaint alongwith the documents are to be read. The defence of the defendant is inconsequential at this stage. It is also a settled law that the valuation done by the plaintiff for the purposes of jurisdiction and relief is deemed to be proper unless, the same appears to be arbitrary on the face of it. It has been rightly said by the counsel for the plaintiff that the

question of limitation is a mixed question of law and fact which becomes a matter of trial. In the amended plaint, the plaintiff has stated that the cause of action for seeking possession of her portion commenced on 03.09.2012 i.e. after the death of her husband. There is no infirmity in raising such a plea. The existence of cause of action is different from succeeding in a cause of action. At the stage of deciding an application under Order 7 Rule 11 CPC, the plaintiff is required to show a cause of action i.e. bundle of rights in her favour which are alleged to be violated by the defendant. In the instant case, the plaintiff has alleged that the plaintiff was denied the possession of the suit property by the surviving legal heirs after the demise of her husband on 03.09.2012. It is also pleaded by her that even though, she was not in the actual physical possession of the suit property, she had retained constructive possession on her portion in the property. It is also stated by her that she had paid the court fee upon her share of the suit property. The defendant is yet to prove that the present suit is barred by limitation and the plaintiff has no cause of action in her favour. The contention of the defendant that no specific date of oral partition has been mentioned by the plaintiff has also become infructuous in view of the amended plaint. Lastly, the contention of the defendant that the present suit is not maintainable as the plaintiff has not sought for the declaration of title in her favour is also not sustainable as it is a settled law that a plaint cannot be rejected in part. Once a court has come to his opinion that the plaintiff has a cause of action with respect to other relief, the suit of the plaintiff cannot

be rejected in part i.e. for want of relief of declaration.
Accordingly, the application of the defendant under Order 7 Rule
11 CPC stands *dismissed*.

Shivali Bansal
ADJ-03, Rohini Courts
North District, Delhi
07.10.2023