

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

IN THE MATTER OF:-

CS DJ586/23
RANDHIR SINGH Vs. RAGHBIR SINGH

16.01.2024

ORDER ON APPLICATION

1. Vide this order, I shall dispose of an application u/o VII Rule 11CPC dt. 19.09.2023 , filed by the defendants/applicants.

CASE OF DEFENDANT/APPLICANT:

2. The plaint does not disclose any cause of action. Plaintiff has been debarred from said property by their father due to bad behaviour. The property has been purchased by the defendants from their own income in name of their father.

CASE OF PLAINTIFF/NON-APPLICANT:

3. The suit property is khasra no. 44/8, area measuring 200 sq. yds. situated in area of gali no.11 B, Swatantra Nagar, Narela, Delhi(hereinafter referred to as suit property).

4. It is the case of the plaintiff that property was purchased by father of the plaintiffs and defendants in name of father of the plaintiffs. Father of the plaintiff died on 02.01.1999 and after the death of father the plaintiff and defendants being brothers have share in suit property.

5. It is further argued that at the stage of rejection of plaint only averments in plaint are to be seen. Defence of the defendants is irrelevant.

SCOPE OF INTERVENTION BY COURT :

6. Instead of referring to all the judicial precedent laid down by the apex court in this regard, it would be apposite to refer to the case of Saleem Bhai v. State of Maharashtra, reported in (2003) 1 SCC 557. ,the Hon'ble Supreme Court, while discussing the factors to be considered by the Courts in exercise of power under ORDER 7 Rule 11 CPC , has held that:

“8. Order 7 Rule 11 CPC reads as under:

“11. *Rejection of plaint.*—The plaint shall be rejected in the following cases—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

APPLYING THE ABOVE CONSIDERATIONS TO FACTS OF PRESENT CASE ;

7. This court has heard the rival submissions of the parties and perused the relevant record with their assistance. The application deserves to be dismissed on the following grounds;

A. Plaintiff has filed suit for partition. The suit property is khasra no. 44/8, area measuring 200 sq. yds. situated in area of gali no.11 B, Swatantra Nagar, Narela, Delhi(hereinafter referred to as suit property). It is the case of the plaintiff that property was purchased by father of the plaintiffs and defendants in name of father of the plaintiffs. Father of the plaintiff died on 02.01.1999 and after the death of father the plaintiff and defendants being brothers have share in suit property.

B. In considered opinion of the court, at this stage after perusal of the plaint it cannot be said that the plaint is without cause of action.

C. In considered opinion of the court, at the stage of rejection of plaint only averments in plaint are to be seen. Defence of the defendants is irrelevant. The defence that the plaintiff was debarred from property requires evidence during the trial. Plaint cannot be rejected on this ground at this stage.

CONCLUSION :

8. In totality of circumstances, the application u/o VII Rule 11CPC by the defendant is dismissed. However, nothing stated in the order shall affect the merits of the case.

9. Application stands dismissed.

Announced in the open Court.
(Order contains 4pages)

(Vikram Bali)
Addl. District Judge-02, North
Rohini Court Complex, Rohini
Delhi/16.01.2024