

25CS DJ1/19

BHUPENDER GUPTA Vs. SUDARSHAN KUMAR

11.01.2024

Present : Sh. Rohan Sharma, Ld. Counsel for plaintiff
along with plaintiff.
Sh. P.K. Aggarwal, Ld. Counsel for defendant no.1
along with defendant no.1.
Sh. Sidhant Gautam, Ld. Counsel for defendant
no.2 along with defendant no.2.

Fresh vakalatnama filed on behalf of plaintiff. The same is taken on record.

APPLICATION UNDER ORDER VII RULE 11 CPC :

Arguments heard on pending application under Order VII Rule 11 CPC filed by defendant no.2.

Ld. Counsel for defendant no.2 has submitted that there is no cause of action against defendant no.2 as it has not been averred which portion of the property was given to defendant no.2. As such, no relief can be sought against defendant no.2.

Per contra, Ld. Counsel for plaintiff submits that the suit property was handed over to both defendants no.1 & 2 collectively and he has mentioned the same in the plaint. In view of the same, he submits that plaint shows that cause of action for recovery of possession and mesne profits are sought against both defendants.

Submissions heard. I have gone through the application and the plaint.

Record reveals that plaintiff has averred in his plaint that the defendants took forcible possession of the suit property from plaintiff and are still in occupation of the same as on the date of filing of the suit. It is also mentioned that as the possession was forcibly taken, therefore, it cannot be taken as permissive possession and as such, plaintiff has sought recovery of possession and amount for occupation charges of the suit property. It is further mentioned that plaintiff had handed over possession of the suit property to defendants. Therefore, cause of action arose to proceed against defendants.

It is further submitted that certain documents have been made by Ld. Counsel for defendant no.2 as are mentioned in the WS. However, same cannot be taken into consideration at this stage of application under Order VII Rule 11 CPC. In view of the fact that plaintiff discloses some cause of action, plaint cannot be rejected. Whether the facts mentioned by plaintiff or defendant no.2 in the WS are correct would be subject matter of trial and the same can only be decided after adducing of evidence.

In view of the same, application under Order VII Rule 11 CPC is dismissed.

APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPC :

Application under Order XXXIX Rule 1 & 2 CPC filed by plaintiff is pending disposal.

After some arguments, all the parties submit that status quo order may be granted as to the title and possession of the suit property.

In view of the same, application under Order XXXIX Rule 1 & 2 CPC is disposed of. All the parties are directed to maintain status quo as to the title and possession of the suit property till the disposal of the suit.

Reply to pending application under Order XII Rule 6 CPC on behalf of defendant no.1 is already on record.

Some more time is sought by Ld. Counsel for defendant no.2 for filing reply to pending application under Order XII Rule 6 CPC.

On request, one final opportunity is granted to defendant no.2 to file the same within four weeks with advance copy to opposite side.

List for arguments on aforesaid application **for 27.02.2024.**

(Rahul Bhatia)
ADJ-01 (South East) Saket Court
New Delhi/11.01.2024 (vg)