

**IN THE COURT OF SH. RAMESH KUMAR-II
ADDITIONAL DISTRICT JUDGE-01: SHAHDARA
KARKARDOOMA COURTS
DELHI**

CS No.1069/16

In the matter of:-

Swati

.....Plaintiff

Versus

Vijay Soni

.....Defendant

08.04.2024

ORDER

Vide this order I shall dispose of the application under Order VII Rule 11 r/w Section 151 CPC filed on behalf of defendant for rejection/dismissal of the plaint of the plaintiff.

The relevant facts for disposal of this application are that the plaintiff has filed the suit against the defendant for possession, permanent & mandatory injunction and recovery of damages and mesne profits claiming that she is the legal and lawful owner of shop bearing no.10 on ground floor, measuring area 7 ft. x 12 ft. i.e. 7.8 sq. mtrs. situated in the abadi of Rashid Market, Patparganj Road, in the area of village Khureji Khas, Khureji Khas, Delhi-110051 (hereinafter referred to as 'suit property'), having purchased the same in the year 2003. The plaintiff further stated that though the defendant is husband of the plaintiff but he never helped her financially, the plaintiff has

purchased the said shop from her own fund as well as some of the amount arranged from her other relatives to purchase the said shop. The plaintiff further stated that the defendant being the husband of the plaintiff was allowed to run his business in the said shop free of cost, as a licensee of the plaintiff but the defendant has neglected the plaintiff intentionally and failed to discharge his obligation and duties towards her being a husband and has failed to take care of her, hence the plaintiff do not want the defendant to continue to be in occupation of the said shop as a licensee or in any other manner and thus she terminated and revoked his said licence and accordingly, the plaintiff issued a legal notice dated 16.08.2014 to the defendant thereby informing him to hand over the vacant possession of the said shop to the plaintiff but of no avail. Hence, the present suit.

Defendant filed written statement thereby taking preliminary objections to the effect that the present suit is not maintainable and liable to be dismissed as no cause of action arose in favour of the plaintiff and against the defendant to file the present suit as the plaintiff is not absolute owner of suit property. The defendant further alleged that the present suit is not maintainable as the plaintiff has not properly valued the property in question and as such she has not filed the proper court fees as per law. The defendant further alleged that the suit is not maintainable as the defendant is not the licensee as per Section 52 of Easements Act 1882. The plaintiff further stated that as per Section 60 of Easement Act the plaintiff has no right to revoke the license in the present matter. Lastly it is requested to dismiss the suit of the plaintiff with heavy costs.

Whereas, the defendant has filed the present application under Order VII Rule 11 CPC r/w Section 151 CPC for rejection/dismissal of the plaint mainly on the ground that the present suit is false, fabricated and not maintainable in the eyes of law because the plaintiff filed the present suit on the basis of registered GPA, unregistered agreement to sell, Will and possession letter which do not confer any ownership right on the suit property of the plaintiff in view of law laid by Hon'ble Apex Court in Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Ors. (SLP (c) No.13917 of 2009).

The plaintiff has filed reply to the present application denying all the assertions made therein and has prayed for dismissal of the said application.

Thereafter, this matter was fixed for arguments on the application under Order 7 Rule 11 r/w section 151 CPC.

Both the parties have filed their respective written arguments on this application.

In written arguments the defendant contended that in the present matter the plaintiff is having unregistered document of property in question as such she has no right and title in the suit property and she has no locus standi to file the present suit.

In support of his submissions ld. Counsel for defendant has placed reliance on following judgments:-

a. Charch of Christ Charitable Trust and Education Charitable Society Vs. Ponniamann Education Trust, cited as 2012 (8) SCC 7006;

b. Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana;

c. State of Rajasthan & Ors. Vs. Basant Nahata (2005 (12) SCC 77; and

d. Sanjay Gupta Vs Kalwati, 2000 IV AD Delhi 257.

On the other hand, the plaintiff vehemently opposed the present application stating in written arguments that PW1 has already tendered her evidence on 03.11.2015 and PW1 was cross examined by the counsel for the defendant on 16.05.2017 at length and thereafter, case is pending for further cross examination of PW1 but despite various opportunities given by this court, the defendant's counsel failed to complete the cross examination of PW1. Ld. Counsel for plaintiff further submitted that the defendant has no right to question the ownership of the plaintiff as he is the permissive user of the suit property which is subject matter of adjudication before the court and the defendant has also not placed on record any document claiming to be owner of the suit property and therefore, he has no right to question the ownership of the plaintiff in respect of the suit property, hence the present application is liable to be rejected outrightly. Ld. Counsel for plaintiff further submitted that the defendant has misunderstood the judgment of Suraj Lamp (supra) in the present facts and circumstances of the present case and the said judgment is not applicable in the present case. Ld. Counsel for plaintiff further submitted that the defendant has failed to point out the absolute ownership right in the suit property except the plaintiff and defendant has no right to question the ownership right of the plaintiff as he is only permissive user of the suit property. Ld. Counsel for plaintiff further submitted that the present application is beyond the scope and ambit of provision of under

Order 7 Rule 11 CPC and as such the defendant has failed to establish any ground, therefore the application is liable to be rejected as the same is filed in order to delay the present matter and defeat the right of the plaintiff.

I have considered the submissions made before the court and perused the record including case laws cited by Id. Counsel for defendant in support of his contentions.

Before proceeding any further, it is relevant to discuss the Law of Rejection of Plaint as enshrined under Order VII Rule 11 CPC.

Order VII Rule 11 CPC is reproduced herein-

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;

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I have perused the record. The plaintiff has filed the present suit against the defendant for possession, permanent & mandatory injunction and recovery of damages and mesne profit.

It is settled principle of law that the averments made in the plaint are the germane and at the time of the disposal of the application under Order VII Rule 11 CPC, the cause of action has to be culled out on a conjoint reading of all the paragraphs of the plaint. It is also settled law that while considering an application under Order VII Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendant in its written statement would be irrelevant.

The defendant in reply on merits of his written statement stated that after marriage, the defendant was running the shop in question in the name and style of M/s Vijay Kumar Bros. & Sons alongwith his brother and they were doing their business of wooden ladder, Charpai etc. on rent and thereafter, the defendant paid the selling amount of the shop in question to the landlord and at that time the registry of the said property was closed and as such it was agreed between the landlord that whenever the registry of the said property would open then landlord would co-operate to execute the sale deed.

Thus it is crystal clear that the defendant is having no ownership documents qua shop in question and as such the defendant cannot challenge the ownership of the plaintiff qua shop in question. The title of the plaintiff is better than the defendant. It is settled law that disputed questions cannot be decided at the time of considering an application under Order VII Rule 11 CPC. Therefore, this court is of the opinion that it would not be just, fair and proper to decide the rights of parties without considering the evidence which the parties may adduce during the course of trial. The requirements of Order VII Rule 11 CPC for

rejection of plaint is not made out. The present application is nothing but is an attempt to delay the proceedings. Therefore, in these facts and circumstances, the application of defendant under Order VII Rule 11 CPC is dismissed. Judgments referred by Id. Counsel for defendant has no applicability to the facts of the present case since defendant cannot challenge the ownership of the plaintiff as the title of the plaintiff is better than the defendant. Judgments referred by Id. Counsel for defendant has no applicability to the facts of the present case since the title of the plaintiff is better than the defendant.

It is made clear that nothing said herein above shall affect the merits of the case or prejudice the rights of any of the parties.

Application under Order VII Rule 11 CPC stands disposed of accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 08.04.2024).

(RAMESH KUMAR-II)
ADDL. DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI