

**IN THE COURT OF MS. PURVA SAREEN,
DISTRICT JUDGE-01, SOUTH, SAKET COURT, NEW DELHI**

CS DJ No.601/23

Sudha Singh

.....Plaintiff

Vs

Chander Prakash

.....Defendant

02.09.2024

ORDER

Present: Sh. Kumar Dhawaj, counsel for plaintiff.

Counsel for defendant.

Vide this common order I shall decide the application under Order VII Rule 11 CPC and under Order 1 Rule 10 CPC filed by the defendant no.1 for rejection of the plaint and filed by defendant no.2 for deletion of his name from the array of defendants.

1. It is submitted that the plaintiff no.1 and 2 are husband and wife and plaintiff no.1 was the owner of property bearing no.J-341, Dakshinpuri, Delhi-62 and plaintiff no.2 was the owner of the property J-342, Dakshinpuri, Delhi-62. Both the properties were built jointly. Defendants are siblings and in 1977, property no.J-341 was allotted by DUSIB to defendant no.2 and J-342 was allotted by DUSIB to defendant no.3.
2. On 28.05.1989, the parents of the defendant divided their properties (J-341, 330, 331, 340) into 3 equal shares of 41.1 sq yards each between all the three defendants vide a family settlement.

3. On 20.09.1989, defendant no.2 and 3 sold their respective shares i.e. property J-342 and J-341 to defendant no.1 and his wife Bhim Kaur who became joint owners of the properties.
4. On 15.04.2023, defendant no.1 and Bhim Kaur sold property no.J-342 and J-341 respectively to Rajwant Singh (plaintiff no.2) and one Daya Nand Respectively. A dispute occurred between the parties and defendant no.1, 2 and 3 were embroiled into several litigations. At the time of selling, defendant no.1 and his wife did not inform the plaintiff regarding the said dispute. Defendant no.2 and 3 meanwhile made false complaints to DUSIB and claimed ownership rights in the properties J-341 and J-342. DUSIB issued notice to the plaintiffs and plaintiffs appeared before the concerned authority and issued directions for sealing the said properties due to which lot of humiliation was faced by the plaintiffs. FIR was also registered against the plaintiff and IO seized the documents of the suit property from the plaintiff. Plaintiff no.2 made police complaint against defendant no.2 and 3 but police did not take any action. There was loss of income for the plaintiffs who were getting rental income of Rs.30,000/- per month from the properties. Plaintiffs made application to DUSIB to desal the properties.
5. On 01.05.2023, Director DUSIB passed a desaling order and suit property was desaled and possession was handed over to the plaintiffs. Closure report was filed by the IO in the FIR and documents of the properties were also released to the plaintiffs. There was a loss of rental amount of Rs.7,50,000/- during 25 months when the property was sealed and plaintiffs demanded Rs.10,00,000/- for damages for mentlal and physical harassment due to malicious acts of the defendants.

Hence, plaintiffs claimed in the present suit damages for Rs.17,50,000/-.

6. The defendants were summoned. They appeared and filed their written statement and the present application under Order VII Rule 11 CPC was moved by defendant no.1 for rejection of the plaint on the ground that no cause of action had arisen in the present suit. Plaintiff himself has mentioned in his plaint that defendant no.2 and 3 had made a false complaint to DUSIB and there was no mention regarding defendant no.1. All the allegations made by the plaintiff were qua defendant no.2 and 3 and there is no cause of action qua defendant no.1.
7. Reply was filed by the plaintiffs to the application under Order VII Rule 11 CPC denying the averments of the defendant no.1.
8. Arguments were heard and record perused.
9. It is a settled position in law that at the stage of application under Order 7 Rule 11 of the CPC, the plaint and the plaint alone is looked into.
10. In case titled as *Saleem Bhai & Ors. Vs. State of Maharashtra Ors., (2003) 1 SCC 557*, in which, while considering Order VII Rule 11 of the Code, it was held as under :

“9. A perusal of Order VII 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 VII 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 any application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court” It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments / pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At this stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184* and *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V.Fortune Express and Others(2006) 3 SCC 100*.

11. As the Court has to only look into the plaint for deciding the application under Order VII Rule 11 CPC, the court cannot go into the written statement or the defence of the defendant while judging the said application. From the above discussion, the court is of the opinion that perusal of the plaint shows a cause of action as the plaint has to be read as a whole and it cannot be rejected qua one defendant and accepted or rejected against the other defendants. As far as the averments made by the defendant no.1 in the application are concerned they do not bar the claim of the plaintiff. Therefore, the court is not inclined to reject the plaint on the ground that the plaint is without any cause of action. Hence, the application of the defendant no.1 under **Order 7 Rule 11 CPC stands dismissed without any cost.** The application is disposed off accordingly.
12. The second application under Order 1 Rule 10 CPC has been moved by defendant no.2 seeking deletion of his name from the array of defendants on the ground that defendant no.2/applicant was allotted the property J-341, Dakshinpuri by DDA in lieu of Jhuggi under settlement scheme on 04.10.1975. The defendant no.1 and his wife had transferred the said plot under forged documents to the plaintiff regarding which an FIR was also registered at PS Ambedkar Nagar which is still under investigation against defendant no.1 and his wife and defendant no.2 had no role to play in the transaction.
13. Reply was filed to the application under Order 1 Rule 10 CPC by the plaintiffs.
14. Arguments were heard and record perused.

15. The plaintiffs have sought specific reliefs against defendant no.2 and hence defendant no.2 is a necessary and proper party. Therefore, his name cannot be deleted from the array of defendants. The application of the defendant no.2 is not maintainable. Accordingly, the applications under 1 Rule 10 CPC stands dismissed and disposed off.
16. To come up for filing of admission/denial affidavits by the parties and framing of issues on 07.11.2024.

Announced in the open court
on 2nd September 2024

(PURVA SAREEN)
DJ-01, SOUTH, SAKET COURT,
NEW DELHI