

CS DJ ADJ 15366/16
KELA DEVI Vs. MAHESH KUMAR ORS.
CNR No. DLSW01-000313-2015

23.03.2021

Present: Sh. S.B. Sharma, Ld. Counsel for plaintiff along with plaintiff.
Sh. Yashwant Gahlot, Ld. Counsel for defendant no.1.
Ms. Anjali Pathak, Ld. Counsel for defendant no.2 along with defendant no.2.
Defendants no. 3, 4 & 5 have already been dropped.

Arguments heard on the pending application u/O VII R 11 CPC. Ld. Counsel for the applicant/defendant no.2 argued that suit of the plaintiff is without any cause of action. Same has been filed with uncleaned hands. The plaintiff had evicted in paras no.3, 4 & 5 of the plaint that the suit property was purchased by her after disposing of another property at Jeevan park in year 2004, whereas she had further stated that at the time of marriage of her sons in year 2005, she was residing in the Jeevan Park Property. Plaintiff had mentioned self contradictory version in the plaint. The suit of the plaintiff, thus becomes without any cause of action which is liable to be rejected u/O VII R 11 CPC. Ld. Counsel for applicant had also referred the case law i.e. Dahiben Vs. Arvindbhai Kalyanji Bhanushali & Ors. Civil Appeal No. 9519 of 2019, passed by Hon'ble Supreme Court of India.

Ld. Counsel for plaintiff opposed the application stating that the application filed by the defendant no.2 is without any merit. The applicant is a abuse of process of law. The suit property is under ownership of the plaintiff which was purchased by her in year 2004. There is no bar that if plaintiff had sold the property in question in year 2004, then, she could not have

resided in that property in year 2005. Plaintiff had properly disclosed cause of action in plaint. The application filed by defendant no.2 is not maintainable and is liable to be dismissed with heavy cost. Reply of the application has also been filed by plaintiff opposing the application.

I have considered the submissions of both parties and have gone through the record. Present suit has been filed by plaintiff against the defendants for possession, permanent injunction and declaration regarding the suit property i.e. property bearing no. 4/37, Roshan Garden, Najafgarh, New Delhi measuring 100 Sq. Yards out of Khasra No.444 in the revenue estate of Masudabad. As per the plaint, the suit property was purchased by the plaintiff from Smt. Bala Devi through agreement to Sell, GPA, Receipt and Affidavit etc. on 20.01.2004. The plaintiff had also placed on record photocopy of aforementioned documents executed by Smt. Bala Devi in favour of the plaintiff qua the suit property dated 20.01.2004. As per the applicant, there is no occasion for the plaintiff to purchase the suit property in year 2004 because admittedly, she had purchased the suit property after disposing of the property at Jeevan Park, but she had mentioned in plaint that at the time of marriage of defendant no.2 with son of plaintiff, plaintiff was residing at her Jeevan Park property in year 2005. Therefore, as per the applicant the documents filed by plaintiff qua the suit property are forged and fabricated documents.

It is a settled law that at the time of deciding the application u/O VII R 11 CPC, Court has to see the contents of the plaint and documents attached with it and the defence of defendant need not be looked into. It is the defence or the averments on behalf of the applicant that the documents filed by

plaintiff qua the suit property are forged and fabricated or that the plaintiff is not having any right, title or interest qua suit property. It is a matter of fact and cannot be decided without trial. Prima-facie, at this stage, only on the basis of averments in the application it cannot be presumed that the documents of the suit property filed by plaintiff are forged and fabricated. As per the contents of the plaint, plaintiff had sufficiently disclosed cause of action in support of her right to sue. The judgment i.e. Dahiben (Supra) referred by the applicant pertains mainly to the Law of Limitation regarding cancellation, declaration of certain documents; and facts & circumstances of the said case are different from present case. Hence, in view of the aforementioned reasons, this application filed by defendant no.2 u/O VII R 11 CPC stands dismissed.

Put up for further proceedings on **28.07.2021**.

**Announced in the open court
On 23.03.2021**

**(Dr. Jagminder Singh)
ADJ-03/South West
Dwarka / New Delhi**