

15.12.2025

Present: Sh. Ashish Singh, Ld. Counsel for plaintiff.
Ms. Devika Agnihotri, Ld. Counsel for defendants.

1. Application under Order VII Rule 11 CPC and application under Order XXXIX Rule 1 and 2 CPC are pending for disposal.

2. Submission heard. Record perused.

3. Briefly stated that present suit for possession, permanent injunction, mesne profit filed on behalf of plaintiff against defendants for suit property i.e. Flat No. 605, Baroda House, NR Government Employees Co-operative Group Housing Society Ltd. with registration no. 1143-GH, located at Plot No. 40-A, Sector-10, Dwarka, Delhi-110075.

4. It is contended that plaintiff is absolute owner of suit property by virtue to share certificate dated 28.04.1996, allotment letter dated 03.01.2010 and possession letter dated 04.01.2010. It is further contended that plaintiff is in possession of suit property since 04.01.2010. In June, 2021 plaintiff visited suit property and found defendants in possession. Thereafter, criminal complaints got filed and same are still pending. It is further contended that being compelled by the circumstances, plaintiff filed present suit seeking following relief:-

- i. *Pass a decree for Possession of the suit property, namely 'Flat No. 605, Baroda House N.R. Government Employees Co-operative Group Housing Society Ltd., located at Plot No. 40-A, Sector-10, Dwarka, Delhi-110075", in favor of the Plaintiff and against the Defendants by removing the Defendants from the suit property.*
- ii. *Grant a decree of Permanent Injunction in favour of the plaintiff and against the defendants restraining them from creating any third-party interests, or transferring, alienating, or parting with the possession of the suit property.*
- iii. *Pass a decree in favour of the plaintiff and against the defendants directing them to pay jointly and severally arrears of mesne profits/occupation charges, along with interest accrued from 01.01.2022 to 31.12.2024, as a legal right amounting to Rs. 18,00,000/- (Eighteen Lacs Only) plus Rs. 27,000/- (Twenty Seven Thousand Only), totaling Rs. 18,27,000/-(Eighteen Lacs Twenty Seven Thousand Only).*
- iv. *Pass a decree in favour of the plaintiff and against the defendant directing them to pay jointly and severally mesne profits/occupation charges to the Plaintiff at the rate of Rs. 50,000/- per month, along with accrued interest at 1.5% per month, from the date the suit is filed (lis pendens) and for future months until the Plaintiff regains peaceful possession of the property and directing them that the interest should continue to accrue at the same rate until the full amount is paid.*
- v. *Award the Plaintiff the costs of the suit.*
- vi. *Pass any other relief or order as this Hon'ble Court may deem fit and proper in the interest of justice, in favour of the plaintiff and against the defendants.*

5. By way of application under Order VII Rule 11 CPC, defendants are seeking rejection of plaint being lack of cause of action. It is submitted that though defendants are not

disputing initial allotment in favour of plaintiff but plaintiff had already sold the same to Sh. Mahabir Singh on 03.11.2011 by virtue of GPA, Agreement to Sell, Affidavit, Receipt, Deed of Will and Possession Letter. It is further submitted that on 14.07.2013, Sh.Mahabir Singh left for heavenly adobe and thereafter, his son namely Sunil Kumar sold the suit property to the defendant no. 1 by virtue of GPA, Agreement to Sell, Affidavit, Receipt, Deed of Will and Possession Letter all dated 09.04.2019. It is further submitted that defendant no. 1 is in continuous possession of suit property since then and residing along with his family. During the course of arguments, Ld. Counsel for defendants requested that present plaint may be rejected being lack of cause of action.

Analysis and Finding:

6. It is settled law that at the stage of considering an application under Order VII Rule 11 CPC, the Court is only required to examine the plaint and the list of documents filed on behalf of the plaintiff alongwith the suit. Other pleas raised by the parties including those in the written statement are not relevant to decide the said application.

7. It is also settled law that, while scrutinizing the averment of plaint, it is duty of the trial court to ascertain material for cause of action i.e. a bundle of facts which taken with law applicable to, then gives the plaintiff the right to the relief against defendant. Even in *Dahiben vs Arvinbhai Kalyanji Bhanusali (2020) 7 SCC 366* Hon'ble Supreme Court held that, Whether a plaint discloses a cause of action or not is essentially a

question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

8. For the purpose of clarification, cause of action as mentioned in the plaint is reproduced here-in-below:-

“That the cause of action for filing the present suit against the defendants and in favor of the plaintiff arose firstly on dated 04.06.2021, when the plaintiff visited his flat and discovered that his original built-in lock of the main door had been changed and the flat was locked with a different lock and an additional iron grilled gate had been installed on the wooden main door and when the security guard (of the Society) informed the plaintiff that some people were residing there. The cause of action further arose dated 07.06.2021, when the plaintiff found that the house was occupied by the defendants whose names came to be ascertained later on as the defendants. It further arose when the plaintiff found from the Electricity Company about the false and forged documents submitted by said Anoop Singh (defendant no.1) in procuring an electricity connection. The cause of action against the defendants and in favor of the plaintiff is still continuing”.

9. Considering facts and circumstances of present case, this Court is of the view that plaintiff is able to disclose cause of action and the question whether plaintiff has already sold the suit property or not, is a matter of trial and cannot be adjudicated at

this stage. Thus, considering the above facts and circumstances, this Court finds no merit in the application under Order VII Rule 11 CPC moved by defendants and hence, same is accordingly **dismissed**.

10. Perusal of record reveals that vide order dated 03.04.2025 this Court already granted *status quo* qua suit property. Ld. Counsel for defendants submits that she has no objection, in case said order made absolute during pendency of present suit.

11. In view thereof, order dated 03.04.2025 made absolute. *Status quo* be maintained qua suit property during pendency of present suit.

12. **Application under Order XXXIX Rule 1 and 2 CPC stands disposed of accordingly.**

13. Perusal of record reveals that plaintiff has impleaded all family members of defendant no. 1 as defendants no. 2, 3 and 4. Considering facts and circumstances of present case, this Court is of the opinion that defendants no. 2, 3 and 4 are not necessary party to the present proceedings. Hence, deleted from the array of the parties. Plaintiff is directed to file amended memo of parties accordingly.

14. Perusal of record further reveals that defendants duly served on 04.02.2025 but filed WS on 12.07.2025 that is too without any specific application for condonation of delay.

15. At this stage, Ld. Counsel for defendant orally requested this Court to condoned the delay on the ground that she had been lately engaged on behalf of defendant. Heard.

16. Admittedly, no plausible explanation given by Ld. Counsel for defendant seeking condonation of delay, however, in the interest of justice, delay in filing the WS stands condoned subject to cost of Rs.5000/- to be paid to the plaintiff. WS is taken on record.

17. Let replication, if any be filed within four weeks with advance copy to opposite side. Both parties shall filed affidavit of admission-denial of documents.

18. Put up for replication, if any, admission-denial of documents and framing of issues on **02.03.2026**.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 15.12.2025 (sk)