

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-05,  
SOUTH WEST, DWARKA COURTS, NEW DELHI**

**Civil Suit No. 17425/16**

**Sh. M.R. Aggarwal**

**..... Plaintiff**

**Versus**

**Radha Raman Sharma**

**..... Defendant**

**ORDER: -**

1. Vide this order, I shall dispose of an application under Order 7 Rule 11 CPC moved by the defendant.
2. It is contended in the application that the plaintiff fails to disclose a cause of action against the defendant. It is stated that defendant and his brother Sh. Radha Ballab were the owners and in possession of a portion of plot No. 42 measuring 216 sq. yards out of Khasra No. 80/4 and 80/5, Village Hastal, Delhi which they had purchased from one Sh. Ramesh on 19.03.1996, whereas the suit property purchased by the plaintiff as mentioned in the plaint as well as in sale deed is a piece of land measuring 8 biswa (400 sq. yards) out of Khasra No. 80/4 situated at Village Hastal, Delhi and as such the description of suit property as mentioned in the plaint is different from the property owned by the defendant. It is further contended that the suit is barred by limitation as period of limitation for a suit for declaration is three years when right to sue accrues. It is also contended that suit is bad for non-joinder of necessary parties as

defendant is only co-owner of the property of the plot of land measuring 216 sq. yards and brother of the defendant who is also a co-owner is also a necessary party who has not been impleaded by the plaintiff whose presence is necessary for just and effective adjudication of the present suit. With these contentions, the defendant has prayed for rejection of the plaint under Order 7 Rule 11 CPC. .

3. The plaintiff has contested the application by filing reply thereto contending that the application is not maintainable as the defendant has failed to point out as to how the suit is without any cause of action or barred by any law. It is stated that as regards distinct description of the property, the Court has already framed an issue. It is further stated that questions of suit being time barred and is bad for non-joinder of parties are mixed questions of facts and law and the same can be decided only by leading evidence by the parties. The plaintiff has contended that the application has been moved only to delay the proceedings of the case and has prayed for dismissal of the application.

4. I have heard the Ld. Counsel for the parties and perused the record carefully.

5. The plaintiff has filed the present suit for declaration, possession, mandatory injunction and mesne profits against the defendant. The case of the plaintiff is that he purchased a piece of land measuring 8 biswa (400 sq. yards) out of Khasra No. 80/4, situated at Village Hastal, Delhi from Sh. Shiv Kumar Pandey and Sh. Shukhbir Singh. After purchase of the property, the plaintiff

raised a boundary wall and installed a gate in the suit property and remained in continuous possession thereof. The plaintiff being a busy architect has left one employee to supervise the suit property, however the said employee left the employment of the plaintiff in the year 2002 and the said plot remained unattended. The son of the plaintiff visited the suit property in early 2015 and found that said property is having a building occupied by the defendant and two other persons. The defendant has occupied about 200 sq. yards of land and raised the building where is is residing alongwith his family members. The son of the plaintiff asked the defendant in what capacity he is occupying the said property but he refused to show any document. The plaintiff thereafter issued a notice dated 13.10.2015 to the defendant asking her to vacate the suit property but despite service, the defendant has not vacated the suit property and is in unauthorized occupation of the same. Hence, the plaintiff has filed the present suit seeking a decree of possession of the suit property in her favour and against the defendant, a decree of damages and mesne profits and a decree of declaration hereby declaring the documents forged by the defendant in respect of the suit property as forged and fabricated.

6. The defendant has filed the written statement contending that the plaint does not disclose any cause of action, the suit property is different from the property in possession of the defendant, the suit is bad for non-joinder of parties and is time barred. The defendant has prayed for dismissal of the suit while denying the other averments made in the plaint.

7. After completion of pleadings, issues were framed in this case vide order dated 05.07.2018 and the case was proceeding for plaintiff's evidence and in between present application was moved by the defendant seeking rejection of the plaint.
8. It is a settled law that while deciding the application under Order 7 rule 11 CPC to ascertain as to whether the plaint discloses a cause of action or not, only averments made in the plaint and the documents filed in support of the plaint are to be looked into and the defence of the defendant and the documents relied upon by defendant are immaterial.
9. A bare perusal of the averments made in the plaint would show that it definitely discloses a cause of action against the defendant and there is no merit in the contention of the defendant that the plaint is without any cause of action.
10. So far as the contention of the defendant that the suit property and the property in his possession are different and distinct is concerned, the same is matter of trial and cannot be decided at this stage. Although issues have been framed in this case on 05.10.2018 and no issue has been framed on the said contention, but an appropriate issue shall be framed in this regard. Similarly the contention of the defendant that suit is bad for non joinder of necessary parties for non impleadment of brother of the defendant is a triable issue for which evidence is required and necessary issue shall be framed on the said contention of the defendant as well.
11. With regard to the contention of the defendant that the suit is barred by limitation as a decree of declaration can be sought

within three years when the right to sue accrues, the plaintiff has claimed in the plaint that he gained knowledge about trespassing the suit property by the defendant when his son visited the suit property in early 2015 and if that averment is taken at this stage, the suit appears to be within limitation. Moreover, whether the suit is barred by limitation or not is a mixed question of facts and law for which an issue has already been framed vide order dated 05.07.2018 as Issue No. (5) and the same shall be decided after trial.

12. In view of aforesaid discussions, I do not find any reason to reject the plaint under Order 7 Rule 11 CPC. All the contentions raised in the present application are disputed question of facts for which trial is required to decide the same. ***The application is devoid of any merit and the same is hereby dismissed with a cost of Rs.2000/- payable to the plaintiff for delaying the matter.***

**Announced in open Court (Balwant Rai Bansal)**  
**on 2<sup>nd</sup> March, 2020 Additional District Judge-05 (South-West)**  
**Dwarka Courts, New Delhi**