

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

Civil Suit No. 17407/16

Sh. M.R. Aggarwal

..... Plaintiff

Versus

Smt. Girja Devi

..... 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 as the property mentioned in the plaint and the property in possession of the defendant are two different properties. It is stated that husband of defendant late Sh. Ram Dayal was the owner and in possession of a portion of plot No. 42 measuring 100 sq. yards out of Khasra No. 80/4 and 80/5, Village Hastal, Delhi which he had purchased from one Sh. Ramesh on 30.07.1996, whereas the suit property purchased by the plaintiff as mentioned in the plaint as well as in the 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 one of the LRs of late Sh. Ram Dayal and other LRs have 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 and similarly with regard to the objection of the defendant that suit is bad for non joinder of parties, issue has already been framed by the Court. It is denied that the suit is barred by limitation and it is stated that the same is a mixed question of facts and law which 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. I have also gone through the written arguments filed by the defendant on the application.
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 suit 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 100 sq. yards of land and raised the building wherein she is residing along with her family members. The son of the plaintiff asked the defendant in what capacity she is occupying the said property but she 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 24.08.2017 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. The contention of the defendant that the suit property as mentioned in the plaint and the property in her possession are two different and distinct properties is a matter fit for trial for which a necessary issue i.e. Issue No. (3) has already been framed by the Ld. Predecessor on 24.08.2017 and the same shall be decided after evidence led by the parties. Similarly, the contention of the defendant that suit is bad for non joinder of necessary parties for non impleadment of other legal heirs of late Sh. Ram Dayal is a triable issue for which Issue No. 2 has already been

framed on 24.08.2017.

10. So far as 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, is concerned, in the plaint, the plaintiff has claimed 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 24.08.2017 and the same shall be decided after trail.

11. 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 necessary issues have already been framed and 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 2nd March, 2020 Additional District Judge-05 (South-West)
Dwarka Courts, New Delhi