

Civ DJ 8340/16

SHARDA DUGGAL Vs. RAKESH DUGGAL AND ANR.

16.01.2024

Present: Sh. Rishabh Jain, Ld. Counsel for plaintiff.

Ld. Proxy counsel for defendant.

Vide this order, this Court shall decide the application u/o 7 Rule 11 CPC moved on behalf of defendant no. 1.

Record perused.

Arguments also have been heard.

In said application, it is submitted that present suit is not maintainable as there is no cause of action in favour of plaintiff and she has no locus to file the present suit. It is submitted that plaintiff has not approached the Court with clean hands and has suppressed the material facts. It is submitted that qua the suit property, Smt. Karamdevi Duggal executed a Will dated 12.03.1992 whereby ground floor of the suit property was given in favour of defendant no. 1 and first floor of the suit property was given in favour of plaintiff. It is submitted that by way of said Will, second floor of the suit property went in favour of Smt. Raj Dulari Diwan, however, Smt. Raj Dulari Diwan executed a relinquishment deed in favour of plaintiff and thereby second floor of suit property also went in favour of plaintiff.

It is submitted that plaintiff was habitually and continuously using the rear door entry from the service lane for the purpose of access to her portions, however, now plaintiff is creating nuisance in the premises of defendant no. 1 by seeking entry from the main gate without any right regarding the same. It is submitted that entry from main gate was exclusively created after the physical separation of shares between plaintiff and defendant no. 1 despite that plaintiff wants the access from the same without having any right regarding the same. It is submitted that in view of above facts, plaint is required to be rejected u/o 7 Rule 11 CPC.

Contd/-

This Court is of the considered view that it is settled proposition of law that while deciding an application u/o 7 Rule 11 CPC, Court has to look into the averment made in the plaint and only on the basis of the same, application u/o 7 Rule 11 CPC is decided. This Court is of the further view that perusal of plaint shows that plaintiff is not admitting that she does not have any right to access to front gate of the suit property. In her plaint, she has clearly stated that she was using the front gate for accessing to her portions for last number of decades. The prayer clause of the plaint shows that plaintiff is claiming reliefs only on the basis of the right as above mentioned. In these circumstances, no ground is made out for rejection of plaint u/o 7 Rule 11 CPC. Accordingly, this application is dismissed.

Matter be put up for remaining PE on next date of hearing i.e. **27.02.2024**.

(Dharmender Singh)
Additional District Judge-01(West)
Tis Hazari Courts, Delhi/16.01.2024