

**IN THE COURT OF SH SHIV KUMAR
DISTRICT JUDGE-02 (WEST)
TIS HAZARI COURTS, DELHI**

**Civ DJ No. 33/2021
CNR NO. DLWT01-000288-2021**

Smt. Suman Sangwan

Plaintiff

Vs.

Smt. Santosh & Ors.

Defendants

**ORDER ON APPLICATION UNDER ORDER 7 RULE 11 READ WITH
SECTION 151 CPC MOVED ON BEHALF OF DEFENDANT NO. 2.**

1. Vide this order, I shall decide the application moved u/o 7 rule 11 read with section 151 CPC filed on behalf of defendant no. 2.

2. It is averred in the application that plaintiff has filed a suit for specific performance and possession injunction, however, it is alleged in para no. 4 of the plaint that, “ That it is submitted that the defendant and her family members gained the trust of the plaintiff and her family members and hence developed cordial relationship with the plaintiff and her family members. It is submitted that the properties bearing no. WZ-1/A, SECOND FLOOR, THIRD FLOOR, TATARPUR, NEW DELHI-110027, were initially in name of Sh. Satish Kumar S/o late Sh. Om Prakash R/o

WZ-1/A, First floor, Tatarpur, New Delh-110027 which was later gifted by him to the son of the defendant i.e. Sh. Sagar Tanwar and in the year 2012, the property No. WZ-1/A Second floor, Tatarpur, New Delhi-110027 was sold by the above mentioned Sh. Sagar Tanwar to the plaintiff through a registered sale deed. It is further submitted that in the year 2016 the above mentioned Sh. Sagar Tanwar transferred the property bearing no. WZ-1/A, Third floor, Tatarpur, New Delhi in favour of defendant”

3. It is further averred that as per law the plaintiff is bound to produce the documents in support of her claim in the court when the plaint is presented by her and shall, at the same time deliver the documents and a copy thereof, to be filed with the plaint. It is further averred that plaintiff with malafide intention and oblique motive, has not filed any documents alleged to be executed by Sh. Sagar Tanwar in favour of defendant/Smt. Santosh as alleged in para-4 of the plaint.

4. It is further averred that on the objections of defendants, the plaintiff filed an application under section 151 CPC to place additional documents on record, which was allowed and the documents alleged to be executed by Sh. Sagar Tanwar in favour of defendant were taken on record.

5. It is further averred that the suit is bad for mis-joinder of necessary parties. It is further averred that an application under order 1 rule 10 CPC was moved by the applicant and same was allowed by this court.

6. Ld. Counsel for the defendant n. 2 further relied upon the judgment of Hon'ble Supreme Court in case titled, Suraj Lamp and Industries Pvt. Ltd. Vs State of Haryana & Anr. Bearing SLP© No. 13917 of 2009. It is contended that the alleged documents taken on record vide order dated 15.02.2023 by the ld. Predecessor of this court did not confer any right, titled or interest in the suit property in view of the various judicial pronouncement passed by the Hon'ble Apex court.

7. It is further averred that present application is being filed for rejection of the plaint purely on legal grounds as per the well settled law passed by the Hon'ble Apex court. It is averred that it is also a settled law that in case where there is an alternate efficacious remedy available to the party, the same alone needs to be invoked and no other mode or act is permissible.

8. Per contra plaintiff filed reply to the above said application and has taken preliminary objection that the present application is nothing but a glaring example of an abuse of process of law and does not hold any ground, for being devoid of correct appreciation of the provision cited herein by defendant no. 2 and the same is liable to be dismissed.

9. It is further contended that the present application is not maintainable in the light of catena of judgments highlighting the very inevitable requirements to be fulfilled for application of the provision of CPC under order VII rule 11 CPC.

10. It is further contended that the present application filed by the defendant no. 2 with mala-fide intention and has been filed with intent to harass the plaintiff with oblique intent to linger on the present suit. It is contended that application under order 7 rule 11 cannot be invoked by defendant to establish their defence and as such the instant application is liable to be dismissed with exemplary cost.

11. On merit, all the contents of the application are denied as wrong and false.

12. Arguments heard. Case file perused.

13. In a Judgment titled as P.V. Gururaj Reddy and Anr. Vs P. Neeradha Reddy and Ors. (2015) 8 SCC 331 decided on 13.02.2015, the Hon'ble Supreme Court observed that rejection of plaint under order 7 rule 11 CPC is a drastic power confer on the court to terminate a civil action at a threshold therefore, the conditions precedent to the exercise of the power are stringent and it is especially so then rejection of plaint is sought on the ground of limitation. It is further observed by the Hon'ble Apex court that when a plaintiff claims that he gain knowledge of the essential facts giving rise to cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under order 7 rule 11 CPC.

14. It is settled law that for deciding an application u/o 7 rule 11 CPC,

the Court has to examine only the averments made in the plaint as well as documents attached with the plaint. The plaint is required to be read as whole and the pleas taken by the defendant in the written statement as well as in the application u/o 7 rule 11 CPC cannot be considered for deciding the application.

15. The defendant has filed the present application on the ground that the transaction of the nature of GPA sales or SA, GPA, Will do not convey title and cannot be recognized as valid mode of transfer of immovable property. It is further contended by defendant no. 2 that immovable property can be legally and lawfully transfer only by a registered deed of conveyance. It is further alleged that the alleged documents executed by defendant no. 2 in favour of Smt. Santosh do not confer any right, title or interest in the suit property. It is further contended that there is no Bayana or agreement to sell executed between plaintiff and defendant no. 2, who is the absolute and exclusive owner of the suit property and as such the relief claimed by the plaintiff in the present case is false and the suit is frivolous.

16. The present suit has been filed by the plaintiff for specific performance and for permanent injunction. The plaintiff has also claimed alternative relief of recovery of Rs. 9,90,000/- from the defendants.

17. It is averred in the plaint that the defendant no. 2 has sold the first floor of the property in question to the plaintiff in the year 2012.

18. It is further averred in the plaint that the defendant no. 1 and his family members gained the trust of the plaintiff and developed cordial relationship with the plaintiff and her family members.

19. It is further averred in the plaint that the second floor and third floor of the suit property were initially in the name of Sh. Satish Kumar, who gifted the said floors to Sh. Sagar Tanwar/defendant no. 2, who is son of defendant no. 1 and the second floor was sold to the plaintiff by defendant no. 2 by a registered sale deed in the year 2016.

20. It is further averred in the plaint that the third floor of the suit property was transferred by defendant no. 2 in favour of defendant no. 1.

21. It is further averred in the plaint that defendants and husband of defendant no. 1 approached the plaintiff for a friendly loan of Rs. 5 lacs which was transferred by the plaintiff, her son, her husband and her daughter, in the account of defendant no. 1. It is further averred in the plaint that defendant no. 1 and her family members have promised to repay the above said loan by 15.06.2023.

22. It is further averred in the plaint that it was agreed that an agreement can be executed between plaintiff and defendant no. 1 with regard to the borrowed money and promise was also made to give physical vacant possession to the plaintiff.

23. It is further averred in the plaint that defendant no. 1 had executed two agreements i.e. one loan agreement and other Bayana agreement and further committed that if the defendants are unable to pay off the said loan amount by 15.06.2020, then the defendants and her family members shall execute a registered sale deed against the said property for which the physical possession had already handed over to the plaintiff.

24. It is further averred in the plaint that an amount of 3 lacs was transferred in the account of defendant no. 1. It is further averred that amount of Rs. 90,000/- was paid in cash to the defendant no. 1 and her family members. It is further averred that defendant further took an amount of Rs. 100,000/- from the plaintiff.

25. It is further averred in the plaint that the defendants are bound to execute sale deed of the suit property after receiving balance amount of Rs. 8,10,000/- from the plaintiff. It is further averred that plaintiff is still ready to pay the said amount.

26. From the above said facts, it is established that plaintiff has cause of action to file the present suit. The contention of defendant no. 2 raised in this application are contentions on merit and cannot be decided without evidence on record. It is also settled law that the plaint cannot be rejected in part. The judgment relied upon by the defendant no. 2 are not applicable to the facts of the present case. Moreover, plaintiff is also seeking

alternative relief for refund of Rs. 9,90,000/- from the defendants.

27. In view of the above said observation and discussion, this court does not find any merit in the application of the defendant no. 2 filed under order 7 rule 11 CPC. Accordingly, same stands dismissed.

**Announced in the open court on
19th day of September, 2024**

**(SHIV KUMAR)
DJ-02, WEST
TIS HAZARI COURT
DELHI**