

5 CS SCJ 43/21

BHAGWAN VALMIKI MANDIR Vs. ASHOK KUMAR PARCHA

30.10.2025

Present: Sh. Mukesh Birla, Ld. Counsel for plaintiff (Through VC)
Sh. Vikrant Sarwan, Ld. Counsel for defendant.

Arguments heard on application under Order VII Rule 11
CPC.

The primary contention raised by the applicant is that the suit of plaintiff is ought to be rejected u/O VII R 11 (a) and (d) CPC as the same is without any cause of action and is barred by Sec. 41(h) SRA, 1963.

The law as regards the scope of Order VII Rule 11 CPC is no longer *res-integra*. The Hon'ble Apex Court in **Saleem Bhai v. State of Maharashtra 2003(1) SCC 557**, while dealing with the same held as follows:

"A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore,

suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects. We are, therefore, of the view that for the afore-mentioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial court for deciding the application under Order VII Rule 11 C.P.C. on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law.”

As regards the contention of no cause of action, the present suit is filed by the plaintiff seeking permanent and mandatory injunction against the Defendant thereby restraining the Defendant / his agents etc. from creating any third party right or interest and from encroaching upon the government land / footpath from main door in front of suit property and also filed suit for mandatory injunction seeking possession of the suit property and to pay rent at prevailing market value from the date of termination of license. In the present suit, it is clearly mentioned that prior to the registration of plaintiff's society, the plaintiff temple has let out 14 shops at its premises and receiving the rent by the then President of Plaintiff temple through the then management committee and also issuing receipts being paid by the Defendant and other licensees by the name of Bhagwan Valmiki Bramalaya Mandir. Subsequently, the members of Valmiki Community decided to get the temple committee registered by the name of Bhagwan Valmiki Mandir Sudhar Samiti, Village Bakhtawarput and the same has been duly

registered. The said fact was also intimated to the Defendant and other licensees and the Defendant started paying license fee to the Plaintiff through registered society. It is further stated in the plaint that due to the violations of terms and conditions of the lease by the Defendant and also because of bona fide requirement, the license of Defendant was terminated vide notice dated 10.02.2020 and on the failure of Defendant to handover vacant possession of suit property, the present suit has been filed which clearly shows that cause of action for filing a suit for permanent and mandatory injunction in fact has arisen in favour of the plaintiff.

Ld. Counsel for Defendant argued that plaintiff has failed to place on record any document qua the title of ownership over the suit property. It is further argued that it is mentioned in the plaint that the GBM held in the premises of plaintiff temple on 20.07.2018 decided to get the temple management company registered. However, no document has been placed on record to show that the GBM held on the said day. Moreover, no proof of possession, either constructive or physical has been placed on record. No lease agreement has been filed. Therefore, the suit of plaintiff is liable to be dismissed on these grounds.

However, the objections raised by Ld. Counsel for defendant-1 is the defence of Defendants and further, it is a matter of trial and the same cannot be decided at this stage without giving an opportunity to the plaintiff to lead evidence on the basis of his claim

made. Suit can only be dismissed u/O VII R 11 CPC only if plaint fails to make out any of the grounds mentioned in Order VII Rule 11 CPC and not beyond that. The Court is not supposed to scrutinize and appreciate evidence or test the evidence set up by the Defendant. This is simply because the Court cannot conduct a mini trial and test the case meticulously at an initial stage. The Court has to, therefore, confine itself to an examination of plaint alone.

As regards the contention that the present suit is barred by Sec. 41(h) SRA, 1963, it is submitted by Ld. Counsel for defendant that Defendant has filed a simplicitor suit for permanent and mandatory injunction. It is further argued that under the garb of mandatory injunction, plaintiff is seeking relief of possession without paying appropriate court fee. It is further submitted that Defendant is claiming himself to be the owner of suit property and also having the documents of ownership in his favour. Therefore, Defendant has succeeded in raising a cloud over the title of plaintiff. Now simplicitor suit for permanent and mandatory injunction is not maintainable without seeking declaration of title. Therefore, the suit of plaintiff is liable to be dismissed as per judgment of Hon'ble Apex Court in Civil Appeal No. 6191 of 2001 decided on 25.03.2008 titled as **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs. and Ors.** Reliance is also placed on **Rajeev Gupta and Ors. Vs. Prashant Garg and Ors. 2025 INSC 552** arising out of SLP (C) no. 2998/22.

In the present case, as per the averments of plaint, the plaintiff claimed himself to be the owner of suit property and is out of possession as the property was let out to the Defendants and the license was terminated vide legal notice dated 05.02.2020 and the postal receipts are also annexed with the plaint. Moreover, plaintiff has also placed on record one receipt qua the payment of rent issued to the Defendant on 29.02.2020 which prima facie shows that there exists a relationship of licensor and licensee and in such circumstances, the plaintiff can file a simplicitor suit for permanent and mandatory injunction and as such, it is settled law that the licensee or an unauthorised occupant can be asked to vacate the property by filing a suit for mandatory injunction and the plaintiff is not required to seek relief of possession separately.

Further, with respect to the submission that the suit is not maintainable without seeking the relief of declaration, it is nowhere mentioned in the plaint that the title of plaintiff is disputed by the Defendant and it is the defence raised by the Defendant that he is the owner of suit property. However, the same cannot be looked into while decided application under Order VII Rule 11 CPC. At this stage, it cannot be said that the title of plaintiff is under cloud or is in dispute where necessarily the plaintiff will have to file a suit for declaration. Therefore, the suit is not barred by provisions of Sec. 41 (h) SRA, 1963. This contention is also devoid of merits.

Accordingly, the present application is disposed off being dismissed. Let WS be filed by NDOH with appropriate application for condonation of delay, if any.

Put up the matter for further proceedings on 26.02.2026.

(RENU)
CIVIL JUDGE (NORTH)
ROHINI/DELHI/30.10.2025