

**IN THE COURT OF MS VANDANA: ADDITIONAL
DISTRICT JUDGE-8 (CENTRAL), TIS HAZARI, DELHI**

CS DJ 1211/2019

Unique ID No.: DLCT01-00-2019

In the matter of:

Rajeev Arora

.....Plaintiff

Versus

Azaz Ahmed @ Ajaj Ahmed

.....Defendant

ORDER

Vide this order I shall decide both the application under Order 6 Rule 17 CPC and under Order 7 Rule 11 CPC.

Application under Order 6 Rule 17 CPC

Plaintiff has filed the application under Order 6 Rule 17 CPC to add the following reliefs:-

(A) Pass a decree of Declaration, thereby, declaring the plaintiff as the owner of the suit property bearing no. 318, area measuring 40 sq yards approx. situated in abadi of Daya Basti, Old Rohtak Road, Delhi, which is more specifically shown in red colour in the site plan attached to the plaintiff by way of redemption of Mortgage Deed dated 22.05.2018.

(B) Pass a decree of specific performance thereby directing the defendant to execute Sale Deed qua the suit property bearing no. 318, area measuring 40 sq yards approx, situated in abadi of Daya Basti, Old Rohtak Road, Delhi, which is more specifically shown in red colour in the site plan attached, in favour of the plaintiff.

(C). Pass a Money Decree in favour of the plaintiff thereby directing the defendant to pay a sum of Rs.10 Lakhs against the loan amount extended by the plaintiff to the defendant by way of Mortgage Deed dated 22.05.2018 alongwith interest at the rate of 18% P.A. from the date of extension of loan i.e. 22.05.2018 till its actual realization.

Through the application, it has been stated that inadvertently the relief of declaration, specific performance and alternate remedy of recovery of Rs.10 Lakhs were not sought, hence the present application.

Detailed reply to the above said application was filed. It has been stated that after the expiry of period of mortgage deed, the defendant is not liable to repay the aforesaid loan amount of Rs.10 Lakhs. It has been further argued by the Ld Counsel for defendant that it is the general rule that parties cannot be allowed, by way of amendment to set up a new case or new cause of action. He relied upon **Ganpat Singh v. Sher Bahadur Singh, (AIR) 1978 All. 66**. It has been further argued that the plaintiff should have filed a suit for foreclosure on the basis of mortgage deed and the amendment sought is barred by Section 41 (h) of Specific Relief Act. Further contention of the defendant is that the suit of the plaintiff is based upon unregistered documents i.e. agreement to sell, will, receipt etc and in view of the **Suraj Lamp Industries (P) Ltd. v. State of Haryana (2012) 1 SCC 656**, there can be no transfer of any right, title or interest of any immovable property except by way of registered document. It was also argued that amendment application has been filed after the expiry of limitation period of three years.

Arguments heard. Case file perused.

The plaintiff has stated in the plaint that when the

defendant remained failed to clear the loan amount within six months then automatically the plaintiff became the owner of the suit property on the basis of one GPA, Agreement to Sell, Affidavit, Will, Receipt dated 22.05.2018. On the basis of above, following reliefs were prayed:-

- (a) Decree of possession.
- (b) Decree of damages and mesne profits
- (c) Decree of permanent injunction.

Now through the present application the plaintiff is seeking the relief of declaration, decree of specific performance and passing of money decree in favour of the plaintiff as alternate relief on the basis of the mortgage deed dated 22.05.2018.

For the above said reliefs, apparently the cause of action is entirely different from the reliefs prayed in the plaint.

The cause of action for the relief of possession on the basis of GPA, Agreement to Sell, Affidavit, Will, Receipt, is different from the relief of specific performance of mortgage deed. Adding the above relief will change the nature of the suit as through the original plaint, plaintiff is seeking relief of possession alleging himself to be the owner of the suit property on the basis of alleged Agreement to Sell, Will, Receipt etc. On the other hand, by way of present application he is seeking the relief of specific performance and declaration to declare the plaintiff as owner on the basis of mortgage deed.

In case titled as **Sushma Thadani v. Yatish Kumar, ILR (2007) II Del 88**, it has been held that:-

“The amendment sought by the plaintiff to the aforesaid effect also tantamount to

withdrawing the case initially set up and setting up a case in consistent with pleadings of the plaint as originally filed. The plaintiff is now seeking to set up a new case not originally pleaded in the plaint. The proposed amendment would not assist in resolving the real controversy between the parties and on the contrary would hamper administration of justice by causing unnecessary delay. Some are without any substance. It is equally settled that a party will not be permitted to set up an entirely new case to defeat the defence raised by the other party. Consequently they are rejected.”

The plaint was filed on 05.12.2019 for the relief of possession, damages and permanent injunction relying upon the alleged GPA, Agreement to Sell, Affidavit, Will, but apparently the plaintiff has changed his stand as now the plaintiff is seeking the relief of specific performance and declaration on the basis of one mortgage deed which is inconsistent to the reliefs prayed in the original plaint. Otherwise also for the relief of declaration, specific performance and money decree, the limitation period is three years. Mortgage deed is of dated 22.05.2018. The present application is of dated 03.08.2022. Therefore, the above said reliefs are barred by law of limitation. Apart from the above the plaintiff has not stated a single word as why the above said reliefs were not incorporated at the time of filing of the suit. Hence, the application under Order 6 Rule 17 Cpc stands dismissed.

Application under Order 7 Rule 11 CPC

Ld Counsel for defendant has prayed for rejection of the plaint on the following grounds:-

1. The plaintiff should have filed the suit for foreclosure on the basis of admitted mortgage deed and not a suit for possession.
2. The suit of the plaintiff is based upon unregistered documents i.e. agreement to sell, will, affidavit, receipt etc and according to Suraj Lamp (supra), there can be no transfer of any property title or interest in any immovable property except by way of registered documents.

Arguments heard. Case file perused.

It has been contended by the Ld Counsel for defendant that the defendant ought to have sought the relief of foreclosure but it is the case of the plaintiff hence being “dominus litis”, it is right of the plaintiff as to what relief he seeks from the court.

Further the plaintiff has sought the relief of possession, damages/ mesne profits and for permanent injunction alleging himself to be owner of the suit property on the basis of one GPA, Agreement to Sell, Affidavit, Will and receipt dated 22.05.2018. Therefore, the entire case of the plaintiff depends upon the above said documents. All the above said documents are unregistered.

In the present case, the ground urged in the application under Order 7 Rule 11 CPC is that the suit of the Plaintiff is not maintainable as no title/ownership vests in him with respect to the suit property by virtue of documents in the nature of GPA, Agreement to Sale and Purchase, Affidavit, Will, Receipt, Possession Letter, etc. It is trite that transfer of immovable property by way of sale can only be by a Deed of Conveyance/Sale Deed, duly stamped and registered as

required by law and in the absence of this, no right, title or interest can be transferred in an immovable property.

In the case in hand plaintiff has relied upon GPA, Agreement to Sell, Affidavit, Will and Receipt which bears the signatures of the defendant. The plaintiff has also relied upon one cheque of Rs.2 Lakhs dated 18.05.2018. The defendant has not denied the signatures on all those documents. Rather it has been stated that plaintiff was in dominating possession, hence his signatures were obtained by the plaintiff on Agreement to Sell, Affidavit, Will, Receipt. At the stage of deciding application under Order 7 Rule 11 CPC, the plaint, the averments of plaint are germane. Hence, the averments mentioned in the plaint cannot be said to be without cause of action or barred by any law. The genuineness, validity and binding nature of document will have to be adjudicated at the appropriate stage after the parties adduced oral and documentary evidence. (Reliance placed upon **Mst. Shanti Devi and Anr. v. Lallu Ram and Others, decided by Patna High Court on 24.11.2023 in Civil Revision No. 31/2023.**) Whether the plaintiff would be entitled for any relief at the end of trial is different from cause of action, hence on this basis the suit cannot be rejected. It was held in **Anuj Sharma v. Amit Sharma, CRP 64/2022, CM Appl. 20882/2022** by our own High Court that:-

“at the stage of deciding an application under [Order VII Rule 11 CPC](#), the Court was required to examine only the averments in the plaint on a mere demurrer and the documents annexed thereto. Not only does the plaint contain averments as aforementioned,

however, Plaintiff has also filed the documents such as GPA, etc. Therefore, at this stage, it cannot be said that the plaintiff deserves to be rejected as being barred by law.”

Therefore, rejecting the suit on the above said ground would certainly amount to snatching the right of the plaintiff from leading evidence to prove his case. Accordingly, application under Order 7 Rule 11 CPC stands dismissed.

Put up for filing filing rejoinder, admission denial of documents and framing of issues on 30.09.2024.

Pronounced in the open Court
on 13th August, 2024.

(VANDANA)
Additional District sJudge-08
Central District : Tis Hazari Courts
Delhi.