

IN THE COURT OF SUB JUDGE (CJM) UDHAMPUR

CNR NO. JKUD020011852022

File No.:1311/2022

Date of Institution: 24-11-2022

Date of Judgment: 07-06-2023

Pawan Kumar S/o Hari Ram R/o Village Megain (Megani) R/o Tehsil and District
Udhampur

..... Plaintiff

Through:- Mr. Gulshan Singh Shan, Advocate

Versus

1. UT of J&K Through Chief Secretary Govt of J&K Civil Secretariat Jammu
2. Secretary To Govt of UT of J&K PWD (R&B) Department Civil Secretariat Jammu
3. Estate Officer Executive Engineer PWD (R&B) Department Division Udhampur

Defendants

Through:- Mr. Sandeep Bhat, Advocate

In The Matter Of:- Civil Original Suit for perpetual Prohibitory Injunction restraining defendants, their subordinates, agents or any other person acting on their behalf from causing any kind of interference or obstruction in possession of the plaintiff over Govt Residential Quarter No. D-4 Behind Old Jail Complex Tehsil & District Udhampur and for declaration that corrigendum order No. 23458-65 dated 19-11-2022 is null and void and not binding on the plaintiff, this order was passed by defendant no. 03 arbitrarily and in violation of aforesaid allotment order 23307-13 dated 16-11-2022 issued in favour of the plaintiff,

And

In the Matter OF:- An application under Order 7 Rule 11 read with Section 151 of CPC.

CORAM: - Manoj Parihar

JO Code: - JK00121

ORDER

1. Defendants/applicants have filed an application under Order 7 Rule 11 read with Section 151 of CPC. It is averred in the application that the plaintiff has filed this suit purportedly for Permanent Prohibitory Injunction restraining the defendants from causing any interference in the possession of plaintiff over Govt Residential Quarter No. D-4. The present suit is not maintainable before this Court as the section 12 of the Jammu and Kashmir Public Premises (eviction of unauthorized occupants) Amendment Act, 2016, provides that District Magistrate of the District in which public premises situated is the Appellant Authority of every order of the estate officer made in respect of any public premises under section 5 or section 7 or section 8 or section 10 of Jammu and Kashmir

Public Premises (eviction of unauthorized occupants Act, 1988). The case of the plaintiff is not maintainable before the court as the law of land (CPC). In view of the provisions provided above the present suit shall be dismissed at the outset without giving any reason or thought into the merits of the case. While considering this aspect the court should be careful to look beyond the clever drafting and see on the root of the case as to whether the plaintiff has any cause of action or not. The provision of rejection of plaint has been enacted to discourage the litigants from flooding the courts with frivolous and vexatious claims. Whenever the court even on its own motion finds a suit to be deficient in having a cause of action, such suit should be rejected so that there is no more any abuse of the process of the court. The court can reject a plaint at any stage of proceeding if it is satisfied that the conditions of the provision is satisfied. Clever drafting creating an illusion of cause of action are not permitted in law and a clear right to sue must be shown in the plaint. Moreover, the power under order 7 rule 11 is not exhaustive and the court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the court. It is needless to submit that the provision for rejection of plaint is mandatory and the court is bound to act if the plaint is found to be lacking in cause of action or debarred to proceed ahead by any provision of law.

2. Ld. Counsel for plaintiff/applicant has filed an objection in which it is stated that the present application is not maintainable and is liable to be dismissed as this application is not filed under any provision of law. The plaint filed by the plaintiff cannot be rejected on any of the grounds mentioned in order 07 Rule 11 of CPC. Moreover, the suit filed by the plaintiff is not barred under law or under the provisions of Jammu & Kashmir Public Premises (Eviction of Unauthorized Occupants Act, 1988). The present application filed by the applicant to delay and embarrass the trial of the present suit with intention to harass and humiliate the applicant.
3. Heard Arguments.
4. Before jumping ahead it is desirable to reproduce Under Order 7 Rule 11 CPC

Rejection of Plaint.-- The plaint shall be rejected in the following cases:--

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the

*requisite stamp paper within a time to be fixed
by the Court, fails to do so;*

*(d) where the suit appears from the statement in
the plaint to be barred by any law;*

5. Perused the pleadings. Through the medium of this suit, the plaintiff has sought Civil Original “Suit for perpetual Prohibitory Injunction restraining defendants, their subordinates, agents or any other person acting on their behalf from causing any kind of interference or obstruction in possession of the plaintiff over Govt Residential Quarter No. D-4 Behind Old Jail Complex Tehsil & District Udhampur and for declaration that corrigendum order No. 23458-65 dated 19-11-2022 is null and void and not binding on the plaintiff, this order was passed by defendant no. 03 arbitrarily and in violation of aforesaid allotment order 23307-13 dated 16-11-2022 issued in favour of the plaintiff”.
6. Perused the annexure III with plaint by virtue of which allotment of Govt. Quarter D-4 Behind old jail complex Udhampur which is previously allotted to Sh. Pawan Kumar (Sr. Assistant Education Department) vide this office order No. 23307-13 dated 16-11-2022 is hereby cancelled as the quarter belongs to gazetted class.
7. The Govt. Quarter, which is Public Premises coming under Section 2 (D) under Public Premises (Eviction...) Act, 1988.
8. As per Section 19 of Public Premises (Eviction...) Act, 1988

19. Bar of jurisdiction.—

No 1[civil court] shall have jurisdiction to entertain any suit or proceeding in respect of—

(a) the eviction of any person who is in unauthorized occupation of any public premises, or-----

9. Thus, this Court lacks the jurisdiction, which is emphatically barred by Section 19 Public Premises (Eviction...) Act, 1988. Thus the plaint is rejected. The decree sheet shall follow accordingly. There is no order as to costs. The suit is disposed of and file consigned to records after its due compilation under rules.

**Announced
07-06-2023**

**Sub Judge (CJM)
Udhampur**