

Ejectment Suit No.6 of 2022

Present: Jayashree Banerjee, Chief Judge

Order No. 20 dated 28.03.2025:

Today is the date fixed for hearing of application under VII Rule 11 of the Code of Civil Procedure.

Ld. Counsels for the defendant as well as for the plaintiff both are present.

It is submitted by the Ld. Counsel for the defendant that on two grounds the defendant have challenged the maintainability of the suit, which are as follows:

- i. the plaintiff in the very first three paragraphs have stated facts which are no corroborating with the document annexed,
- ii. No cause of action has been disclosed in the plaint.

Ld. Counsel for the defendant thereafter invited the attention of this Court to paragraphs 1, 2 and 3 of the plaint which are quoted herein below for brevity of discussion:

"1. By a registered Indenture of Conveyance dated 25.01.2021 the Plaintiff purchased from Smt. Puspa Devi Jhawar the divided half portion of land measuring 1282.5 sq.ft. alongwith a G+ 6 storied building marked as Lot-"A" and Lot-"B" of the Partition Deed dated 03.04.1959 and the proportionate share in the common space in Lot-"D" lying and situate at premises No. P-18, Kalakar Street (formerly P-18, [C.I.T.](#) Scheme No. XLII, Block-"A", Holding No. 475) P.O. Burrabazar, P.S. Posta, Kolkata-700 007 (said portion of the Premises) subject to the existing monthly tenants in occupation of the said premises on valuable consideration free from all encumbrances.

2. The Defendant was an existing monthly tenant in respect of one room in Lot-"A" on the ground floor of the said portion of the premises No. P-18, Kalakar Street, P.S. Posta, Kolkata-700007 lastly paying rent @ Rs.5,500/- per month according to English Calendar under the erstwhile owner Smt. Puspa Devi Jhawar. A fuller description of the tenanted area of the Defendant will appear from the Schedule hereunder which is the subject matter of the present suit hereinafter referred to as the "Suit Room".

3. Upon transferring the said premises to the Plaintiff the erstwhile owner Smt. Puspa Devi Jhawar duly gave notice in writing dated 03.02.2021 to the tenants including the defendant intimating that she sold and transferred the said portion of the premises and thereby asking the tenants including the defendant to attorn the tenancy and pay

monthly rent to the Plaintiff in respect of the said portion of the premises accordingly the Defendant had been also asked to pay his monthly rent to the Plaintiff in respect of the suit room. It revealed that the adjacent owner of Lot-"C" wrongfully and illegally was collecting rent from the tenants / occupiers of Lot-"A" and Lot-"B" of the said portion of the premises purchased by the Plaintiff. The Plaintiff after the notice given by the erstwhile owner, also caused a notice dated 08.02.2021 to all the tenants of the said portion of the premises where the Defendant also was a monthly tenant intimating thereby that the Plaintiff has purchased the said divided and demarcated portion of Lot-"A" and Lot-"B" alongwith common right of Lot-"D" of premises No. P-18, Kalakar Street, so Kanahiyalal Jhawar or his legal heir, being the owner of Lot-"C" of the said premises have no right to issue any rent bill in respect of the said portion of the premises purchased by the Plaintiff and tenants were also invited to look and inspect the partition Plan / Map, purchase deed etc. on prior appointment."

Ld. Counsel next invited the attention of this Court to a rent receipt issued by Puspa Devi Jhawar as a trustee of Seth Puspa Ram Jhawar Trust in favour of Kanhaiya Lal Jhawar. Ld. Counsel thereafter invited the attention of this Court to the filled in figures of the rent receipt which shows that the amount of rent is Rs.5,500/- and 50% of the said amount being Rs.2,750/- was accepted as rent from defendant by Puspa Devi Jhawar. Ld. Counsel pointing out to such filled in figures in the rent receipt submitted that the plaintiff herein is not the only landlord that of the tenant being the defendant herein, there are other co-owners who are the landlord of the defendant. Ld. Counsel also submitted that Law is clear that one of the co-owners can file the suit provided the other co-owners give their consent by authorizing one of the co-owners to file the suit. According to the defendant the plaintiff did not obtain the permission or authorization of the other co-owners and therefore the plaintiff is not competent to file the instant suit against the defendant.

The next point that was urged before this Court by the Ld. Counsel for the defendant is that no cause of action has been disclosed in the plaint and therefore without any cause of action the suit is not maintainable which is therefore liable to be rejected outright.

Ld. Counsel for the defendant relied upon few decisions in support of his contention reported in 2004(3) SCC 178 paragraph 6. Contents of paragraph 6 is quoted herein below for brevity of discussion:

"Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha v. Jagannath and others, 1976 RCR (Rent) 832; 1976(4) SCC 184. Dhannalal v. Kalawatibai and others, 2002(6) SCC 16; 2002(2) RCR (Rent) 126 (SC). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek

ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

Ld. Counsel next relied upon a decision reported in 2017 SCC OnLine SC 2133. The said decision dealt with the point when can one of the co-owners file a suit in absence of the other co-owners not joint as plaintiff. The judgement is quoted herein below for brevity of discussion:

“1. In view of the elaborate arguments that have been advanced at the Bar we deem it proper to support our conclusions, which is adverse to the petitioners, with our reasons therefor,

2. The petitioners are two out of three co-owners who had instituted a suit for eviction of the respondent No. 1-tenant. The third co-owner (Respondent No. 2 herein), who is the defendant No. 2 in the suit, in his written statement, objected to the eviction and explicitly stated that the suit is without its consent. The trial Court while considering the application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant No. 2 thought it proper to hold that the objection raised with regard to maintainability should be decided in the course of the trial of the suit.

3. In appeal, the High Court took a different view holding the suit to be not maintainable. Hence, these petitions for special leave to appeal to challenge the said order.

4. We have heard the learned counsels for the parties.

5. The issue of maintainability of a suit in the facts notice above apparently has not fallen for consideration before this Court. What has been decided and it will not be necessary to refer to the long line of cases on the point is with regard to the maintainability of a suit filed by a co-owner in the absence of any objection of another co-owner(s). Such a suit has been held to be maintainable. What would be the position if a co-owner objects, as in a present case, is the question that calls for an answer in the present petitions.

6. The closest decision on the point is in the case of *India Umbrella Manufacturing Co. v. Bhagabandel Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt)*, which, however, does not answer the question fully as the objection of the co-owner in *India Umbrella (supra)* was in the course of the trial of the suit and in a situation where the suit property had changed hands.

7. The concept of co-ownership of immovable property need to hardly detain the Court. Every co-owner has ownership of the entire property which in absence of any partition must be understood to extend to every inch of the property.

8. The very concept of co-ownership, in the absence of any partition, would militate against the maintainability of the suit for eviction against a tenant, where the tenant is admittedly, in possession of the property which is owned by the co-owner who objects to the eviction.

9. The decision of Patna High Court in *Sharfuddin v. Bibi Khatija* has been cited by expressed therein may serve as a foundation for laying down the law upholding the maintainability of a suit filed in a situation where a co-owner does not consent anti, in fact, objects to the decree of eviction sought by the other co-owner. It is contended that such a view would be a reasonable and logical extension of the law

laid down by this Court with regard to maintainability of suit filed by a co-owner, where no objection is raised by another co-owner.

10. Having read and considered the judgment of the full Bench of the Patna High Court in Sharfuddin (supra), we are unable to agree with the views expressed therein. The Patna High Court seems to have taken into account the power of veto which would be vested in a co-owner if a suit for eviction co which he objects is held to be not maintainable. The issue with regard to partition which is an option open to the co-owners who seek eviction was sought to be answered by the High Court by holding the remedy to be cumbersome. When the law provides a remedy which the aggrieved party can avail of, the same cannot, in our considered view, be ignored only on the ground that asking the parties to avail of the said remedy would be relegating them another round of litigation.

11. For the aforesaid reasons, we are inclined to take the view that the decision rendered by the High Court in first appeal is correct. We, therefore, affirm the sard decision and dismiss these petitions for special leave to appeal against the order of the High Court.”

The last judgment cited by the Ld. Counsel for the defendant is reported in 2020 (7) SCC 366 paragraph 23.

The decisions as relied upon by the Learned Counsels for the defendant do not require elaborate discussions by this Court as the facts and circumstances are different in the present case. In the present case the property is a partitioned property by a deed of Partition dated 03.04.1959 and from the Deed of Conveyance it is not denying that the plaintiff is the owner of Lot-A where the defendant is a tenant.

In reply to the submissions of the Ld. Counsel for the defendant, the Ld. Counsel for the plaintiff invited the attention of this Court to the certified copy of Deed of Conveyance which was handed over to the Court by way of firstly from the side of the defendant. From the said Deed of Conveyance, Ld. Counsel for the plaintiff invited the attention of this Court to the page where plan of Premises no.P-18, Kalakar Street, Kolkata-700007 is annexed.

Ld. Counsel next submitted that by two separate Deed of Conveyance Lot-A and Lot-B were purchased by the plaintiff and defendant's shop is situated in Lot-A. When the plaintiff is the owner of both Lot-A and Lot-B and that defendant's shop is in Lot-A then why it was necessary to take the permission to other co-owners to file the instant suit. As regard the submission of the Ld. Counsels for the defendant that no cause of action has been disclosed by the plaintiff in the plaint, attention of this Court was invited to paragraph 10 at page 8 of the plaint by the Ld. Counsel for the plaintiff. Paragraph 10 reads as follows:

“10. The cause of action for the suit arose on and from 1st March, 2022 and the said cause of action is still continuing day by day till this day at premises No. P-18, Kalakar Street, P.S. Posta, Kolkata-700 007 within the jurisdiction of this Ld. Court.”

Having read out the paragraph as quoted herein above Ld. Counsel cited few decisions on the point as to what the Court will consider to gauge whether the plaint discloses cause of action or not.

The first decision cited by the Ld. Counsel for the plaintiff is reported in (2004) 9-SCC-512 read note G -

“Rejection of plaint – whether plaint disclosed a cause of action – held, is a question of fact to be determined by reading the averments made in the plaint in their entirety – Test to determine the question – if averments made in the plaint or documents relied upon disclose a cause of action, plaint should not be rejected merely on the ground that the averments are not sufficient to prove the facts stated therein – for disposal of application under Rule 11(a), documents filed under Rule 14 must be taken into consideration.”

The next decision relied upon by the Ld. Counsel is reported in (2004) 3 SCC 137. Ld. Counsel invited the attention of this Court to paragraphs 11, 12, 13, 17, 18 and 21 of the said judgment, quoted herein below:-

“11. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal* it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal*³.)

13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

17. Keeping in view the aforesaid principles, the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

18. As noted supra, Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. Order 6 Rule 16 of the Code is relevant in this regard. It deals with "striking out pleadings". It has three clauses permitting the court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the court.

21. According to Mr Mohta appearing for the appellants, as noted above. the reliefs are separable and merely because some of the reliefs cannot be granted by the civil court, it would entail an automatic rejection of the old plaint. In fact he submitted that some of the reliefs would be given up by the plaintiffs in the suit itself. It is true as contended by Mr Savant, learned counsel appearing for the respondent Trust that by ingenious drafting a cause of action in the nature of red herrings cannot be brought

into the judicial arena. But a reading of the reliefs shows that some of them can only be considered by the civil court.”

The next decision cited is reported in 2006 (2) ICC 479 and relied upon paragraphs 11 and 12, reproduced herein below:

“11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to see whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII, Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

12. Similarly, the Court could not have taken the aid of Section 10 of the Code for stay of the suit as there is no previously instituted suit pending in a competent Court between the parties raising directly and substantially the same issues as raised in the present suit.”

The last judgment cited by the Ld. Counsel is reported in 2022 (3) ICC 549 (Cal), relied upon paragraph 19 reproduced which leads as follows:

“19. After taking note of the decision of the Hon'ble Supreme Court in the case of ITC Ltd. (supra), the Hon'ble Supreme Court in *Mayar (H.K.) Ltd. (2006(2) ICC (S.C.) 479)* held that so long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the judge the plaintiff may not succeed cannot be a ground for rejection of plaint. The Hon'ble Supreme Court further held that Order 7 Rule 11 of the Code does not justify the rejection of any particular portion of a plaint. The Hon'ble Supreme Court held thus-

11.....In *Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487]* this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order 7 Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court therein could not act under Order 7 Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order 6 Rule 16 to strike out the paragraphs in the absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court.”

After having recorded the submission as were advanced before this Court by the Ld. Counsels appearing for the plaintiff and the defendant it is relevant to record that in the midst of hearing of the matter, this Court put a question to the Ld. Counsels appearing for the defendant whether the defendant had any other shop room or the shop which is shown in the plan of the building was extending out of Lot-A. Ld. Counsel for the defendant was not ready with the answer to this question that was put to him and in his reply tried to harp upon the document which was the receipt showing that the full rent amount was Rs.5,500/- and Puspa Devi Jhawar accepted only Rs.2,750/- which is 50% of the full rent amount meaning that Puspa Devi Jhawar from whom the plaintiff had purchased the property was not the only landlord of the defendant. At the same time the Ld. Counsel for the defendant could not deny the fact that the plaintiff had purchased Lot-A and Lot-B and that the defendant's shop was in plot-A of which the plaintiff is the owner. That being so, the Court had to examine witnesses or the matter had to be examined on trial to find out whether there are other co-owners who were the landlords of the defendant.

Regarding the question of non-disclosure of cause of action, this Court places reliance upon the judgments cited by the Ld. Counsel for the plaintiff, the ratio of which is as long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the judge, the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case this Court after thoroughly reading the plaint found that the plaintiff has disclosed enough facts and circumstances that discloses a cause of action that requires to be determined by the Court after examining the witnesses and the documents that are to be relied upon by the parties.

Hence, this Court is of the opinion that while deciding an application under Order VII Rule 11 of CPC the plaint it discloses some cause of action that requires to be gone into by the Court on trial the same cannot be rejected on some trivial discrepancies that has been pointed out by the Ld. Counsels for the defendant.

Hence, it is

Ordered

that the instant application under Order VII Rule 11 of the Code of Civil Procedure is rejected on contest fixing the matter for hearing of the application under Order 1 Rule 10(2) of the Code of Civil Procedure, written objection if any in the meantime. It is also made clear no adjournments shall be granted by this Court on frivolous grounds.

Fix 08.04.2025 for hearing of application under Order 1 Rule 11 of CPC.

Dictated & corrected by me:

Chief Judge

Chief Judge
City Civil Court, Calcutta