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**(1998) 10 DEL CK 0039**  
**In the Delhi High Court**  
**Case No : Suit No. 813 of 1998**

Ajay Goel

APPELLANT

Vs

K.K. Bhandari and Others

RESPONDENT

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**Date of Decision :** 14-10-1998

**Acts Referred:**

**Citation :** (1999) 48 DRJ 292

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Mr. R.L. Kohli, for the Appellant; Mr. Arvind K. Nigam, for the Respondent

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## Judgement

Dr. M.K. Sharma, J.—The present suit has been instituted by the plaintiff against the defendants u/s 31 of the Specific Relief Act seeking for a decree for mandatory injunction as also for perpetual injunction. The plaintiff in the present suit has prayed for a decree that the documents namely original sale deed dated 10.1.1997 executed by Mrs. Malti Bhandari in favor of defendant No.1 and registered with the Sub-Registrar, Defendant No. 4, the power of attorney dated 16.12.1996 registered on 18.12.1996 with defendant No. 5 and the documents of transfer of property in favor of defendant No.1 by defendants No.3 & 8 be directed to be filed in Court and the same be declared as void and cancelled and thereafter delivered up to the plaintiff.

2. The plaintiff earlier filed a suit being Suit No. 2946/1996 for possession and permanent injunction and the same is pending in this Court. It is stated that during the pendency of the earlier suit filed by the plaintiff for possession and in utter disregard of the rule of lis pendens as is enshrined u/s 52 of the Transfer of Property Act the defendants have fraudulently brought into existence aforesaid documents which were required to be declared as void. This Court, however, by order dated 4.5.1998 ordered that before the suit is taken up for admission the plaintiff is to satisfy on the following points:

1. Whether the suit as framed is maintainable?
2. Whether the suit for declaration implicate without claiming relief of possession is maintainable?
3. Whether the suit is properly valued for purposes of Court fee and jurisdiction?
4. Whether the defendants 3 to 7 are necessary or proper parties?
5. Whether the suit against defendant No. 5 is maintainable at Delhi?

3. The plaintiff was directed to advance his arguments on the aforesaid preliminary points. The Court also called for the records of Suit No. 2496/1996 as also the records of the Civil Writ Petition No. 4488/1995 which have been made available with the record of the present suit.

4. The defendant No.1 has also entered appearance and Therefore, I have heard the learned Counsel appearing for the plaintiff as also for defendant No. 1 on the aforesaid issues framed by this Court on 4.5.1998.

5. Mr. Kohli appearing for the plaintiff submitted that the Court cannot exercise powers under Order 7, Rule 10 and/or Rule 11 of the CPC before issuing of summons to the defendants. According to the Counsel the said power could be exercised under the aforesaid provisions only after issuance of summons to the defendants. The learned Counsel also argued at length on the aforesaid issues raised by this Court. Counsel for the plaintiff further submitted that even if it is assumed that the provisions of Order 7, Rule 10 and/or 11, CPC apply to the present proceedings, at this stage the plaintiff cannot be non-suited nor can the plaint be rejected on the ground that the suit as framed is not maintainable nor the plaint could be rejected and the suit dismissed even if it is found that the suit is not maintainable without claiming relief of possession or that the suit is not properly valued, or that the defendants No. 3 to 7 are not necessary and proper parties.

6. Mr. Nigam appearing for defendant No. 1 however, submitted that the issues that have been framed by this Court are very relevant and if this Court at this juncture finds that the suit is vexatious the same could be dismissed at the very threshold. According to him if it is found that the suit is inspired by vexatious motive and is altogether ground less and a bogus litigation the Court is required to dismiss the suit at the earliest stage so as to protect the defendants from contesting a vexatious litigation. He further submitted that the Court can exercise powers under Order 7, Rule 10 and/or 11, CPC and also can dismiss a suit at any stage and that the Court can examine a plaint before admitting the same or at any time thereafter. Counsel also submitted that the suit as framed is not maintainable. He further submitted that the suit is not properly valued for the purpose of Court fee and jurisdiction and that defendants No. 3 to 7 are not necessary and proper parties.

7. In the light of the aforesaid submissions of the learned Counsel for the parties

it has become necessary to decide as to whether this Court can consider and exercise powers under Order 7, Rule 10 and/or 11, CPC at this stage or not. In this connection reference may be made to the provisions of Order 7, Rule 11, CPC which states that a plaint could be rejected at any stage provided any of the pre-conditions as envisaged in the four clauses is attracted. If after presentation of the plaint the Court finds that the suit is bad for want of cause of action or the suit is not properly valued or if any of the other two pre-conditions is not satisfied the Court can exercise the power and jurisdiction to reject the plaint even at the very threshold. In *T. Arivandandam Vs. T.V. Satyapal and Another*, , it was held by the Supreme Court that if the Trial Court is satisfied that the litigation was inspired by vexatious motives and altogether groundless it could take deterrent action u/s 35-A. The Supreme Court further held that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled.

8. In *Sivananda Roy Vs. Janaki Ballav Pattnaik and Others*, , it was held that the language of Order 7, Rule 11 makes it imperative that the facts Constituting the cause of action must find place in the plaint and that if a plaint which does not conform to the aforesaid requirement is filed, appropriate action should be taken by the Court under Order 7, Rule 11 provided the said plaint does not disclose a cause of action. In the said decision it was further held that rejection of the plaint is not restricted to any particular stage of the suit and the Court may examine the plaint even before admitting it or at any time thereafter and in coming to the aforesaid conclusions the Orissa High Court relied upon the ratio of the decision in *T. Arivandadam's* case (supra). The expressions used in Order 7, Rule 11, CPC is clear and explicit. A plaint could be rejected by the Court if any of the conditions of the four clauses mentioned therein is found to be attracted. If a suit does not have any cause of action the same could be rejected even at the very threshold i.e. even before admitting the suit or at any time thereafter. The Court's power is not restricted, as submitted by the learned Counsel for the plaintiff, that such a plaint which does not disclose even a cause of action could not be dismissed without issuing summons on the same. Thus in my considered opinion this Court has power and jurisdiction to frame five issues even without ordering for issuance of summons. The Court should always be conscious of the fact that a bogus and groundless litigation is not brought to the Court and if a proceeding is inspired by oblique motive and/or a suit appears to the Court to be vexatious the same should be rejected at the earliest stage.

9. Having decided the aforesaid issue against the plaintiff I may now proceed to deal with the other issues which were raised and framed by the Court on 4.5.1998:

Issue No. 1:

10. The plaint presented when read Along with the proceedings of Suit No.

2946/1996 disclosed that a parcel of land was granted in favor of the plaintiff by the defendant No. 8 society vide sale deed dated 21.9.1970. The said document is available with the record of Suit No. 2946/1996, which indicates that the plaintiff paid a sum of Rs. 24,989/- towards consideration of the aforesaid piece of land. It is disclosed from the records that the plaintiff executed certain documents on 27.10.1992 in favor of defendant No. 1 in terms of which the plaintiff received a consideration of Rs. 3,96,000/- from defendant No.1. The said documents although described as agreements, prima facie indicate that the same constitute sale of the suit property in favor of defendant No.1 by the plaintiff. It is also an admitted fact that defendant No. 1 thereafter was also put in possession of the suit property by the plaintiff. It is also admitted fact that the lease deed of the plaintiff was cancelled by the lessor, Lt. Governor of Delhi on 6.10.1978. The aforesaid order passed by the Lt. Governor of Delhi cancelling the lease deed in favor of the plaintiff was not challenged and thus the same has become final. Thus the plaintiff as of today has no title to the property subsequent to the cancellation of the lease deed granted in his favour. It is also disclosed from the records that consequent upon cancellation of the lease deed the DDA commenced proceedings under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1973 against the defendant No. 1 and an order of eviction was passed. The aforesaid order of eviction was challenged by defendant No.1 by way of a regular civil suit and in the said suit the prayer for injunction of defendant No. 1 was declined and an appeal against the same was filed in this Court. But during the pendency of the aforesaid appeal the DDA brought out a scheme in terms of which the DDA sought to regularise the sale of immovable properties made on the basis of irrevocable power of attorneys. In pursuance of the aforesaid scheme the defendant No.1 made an application to Delhi Development Authority on 28.12.1989 and deposited a sum of Rs. 1,50,200/- with the DDA towards part payment of 50% unearned increase Along with an application for extension of time to deposit the balance money. The DDA by letter dated 22.12.1989 directed the defendant to deposit a sum of Rs. 16,69,595.50 towards balance unearned increase and restoration charges of Rs. 33,160/-. On 6.7.1992 the defendant No. 1 made further deposit of Rs. 1 lac and on 17.8.1993 made further deposit of Rs. 50,000/-. The DDA by letter dated 20/21.11.1995 demanded balance un-earned increase of Rs. 14,02,755/- plus interest on unearned increase of Rs. 15,93,726/- restoration charges and Rs. 33,160/- and damages for use and occupation of the property in the sum of Rs. 2,66,946/- totalling Rs. 32,96,587/-. The defendant No. 1 paid the entire amount demanded by the DDA on 6.12.1995. Upon receipt of the aforesaid payment on 9.12.1996 the DDA granted sale permission for sale of the suit property to defendant No. 1.

11. From the aforesaid facts disclosed from the records, it is crystal clear that with the sale of the property in question by the plaintiff to the defendant No.1 and cancellation of the lease of the plaintiff by the Lesser Lt. Governor of Delhi on 6.10.1978 and the DDA granting permission for sale of the suit property in

favor of defendant No. 1 on 9.12.1996 after payment of the entire dues as demanded by the DDA, no right, title and interest of the plaintiff in respect of the suit property as of today exists. In the present suit the plaintiff has not challenged the cancellation of lease made in 1978 and has also not challenged the action of DDA in demanding payment from the defendant No. 1 and has also not challenged the sale permission dated 9.12.1996. The plaintiff has also not challenged the communication dated 16.1.1997 of DDA to defendant No. 1. Thus in the absence of any challenge as aforesaid and extinguishment of the right, title and interest of the plaintiff in respect of the suit property the plaintiff cannot seek relief u/s 31 of the Specific Relief Act for cancellation of the sale deed by which the title of defendant No. 1 was made perfect on the ground that the same is void against the plaintiff. Admittedly the defendant, apart from paying Rs. 3,96,000/- to the plaintiff has paid a sum of Rs. 35,96,787/- to the DDA. With the sale of the property in question by the plaintiff to the defendant No. 1 and cancellation of the lease by DDA and sale permission in favor of the defendant No. 1, there could not be allegation made by the defendant No. 1 that the sale deed dated 10.1.1997 and the power of attorney are void and thus there is no cause of action for the plaintiff u/s 31 of the Specific Relief Act. In view of the aforesaid facts and circumstances, the suit as framed by the plaintiff is held to be not maintainable.

#### Issue No. 2:

12. The present suit has been instituted by the plaintiff u/s 31 of the Specific Relief Act praying for cancellation of certain documents as void. No relief is sought for by the plaintiff for possession although in a suit u/s 31 of the Specific Relief Act such a relief can be prayed for. The plaintiff admittedly is not in possession of the suit property and has not been so since 27.10.1972 i.e. for the last more than 26 years. In Suit No. 2946/1996 the plaintiff has sought for possession. The defendant has already filed its written statement in that suit and I find from the records that in the said suit also various preliminary objections have been raised by the defendant. The remedy u/s 31 of the Specific Relief Act is to remove a cloud upon title. In this connection reference may be made to a Full Bench decision of Madras High Court in Muppudathi Pillai Vs. Krishnaswami, reported in AIR 1960 Mad 1. In the said decision it was held that the provisions of Section 39 make it clear that three conditions are requisite for the exercise of jurisdiction to cancel an instrument which are as follows, (i) the instrument is void or voidable against the plaintiff; (ii) the plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (iii) in the circumstances of the case the Court considers it proper to grant this relief of preventive injustice. The Madras High Court while analysing the second aspect of the matter emphasised that the remedy u/s 39 (now Section 31) is to remove a cloud upon the title by removing a potential danger but it does not envisage an adjudication between competing titles. It was held that such an action could relate only to instruments executed or purported to be executed by a party or by any person who can bind him in certain circumstances or that it was only in such

circumstances that it can be said that there is a cloud on his title and the apprehension that if the instrument is left outstanding it may be a source of danger.

13. From the discussion aforesaid it is found that the plaintiff does not possess any right, title and interest in the suit property as of today, particularly after cancellation of his lease deed, after sale of the property in favor of defendant No. 1 by receiving sale consideration thereof and also after DDA has granted permission for sale of the suit property to defendant No. 1 by its order dated 9.12.1996 after it received payment thereof from the defendant No. 1. Since the plaintiff has not challenged any of the aforesaid actions in the present suit it cannot be said that the present suit has been instituted by the plaintiff to remove any cloud with regard to his title. In *Debi Prasad and Others Vs. Smt. Maika and Others*, it was held that a suit filed by the plaintiff cannot be decreed if the plaintiff fails to establish his title to the disputed property only on the basis of possession. The plaintiff in the present case has failed to establish his title to the disputed property and admittedly is also not in possession. Even if a decree is granted to the plaintiff as sought for and the documents as mentioned in the relied portion of the plaint are held to be void and declared cancelled even then no benefit would be derived by the plaintiff either with regard to the title of the suit property or with regard to the possession. As is held in *Debi Pershad (supra)*, mere possession in itself or possessory title does not entitle a person to a decree for cancellation of a written instrument unless the person can show his title to the property also. The plaintiff is also admittedly out of possession of the property from 1972 and Therefore, suit should have also been filed for delivery of possession. Mere order as sought for u/s 31 of the Specific Relief Act would not entitle the plaintiff to get the complete relief. On this count also the plaintiff has not been able to make out a case. This issue is Therefore, decided against the plaintiff.

Issue No. 3:

14. The plaintiff has valued the plaint as per his averments made in para 20 of the plaint for the purpose of jurisdiction and Court fee for a sum of Rs. 5,06,000/-. The admitted consideration paid by defendant No. 1 to the DDA is Rs. 35,96,787/-. It is also admitted that the defendant No. 1 had paid to the plaintiff a sum of Rs. 3,96,000/- towards sale consideration of the suit property in the year 1972. Thus the value as shown by the plaintiff for the present suit is improper and inadequate and the suit is not properly valued for the purposes of Court fee. This issue is also decided against the plaintiff.

Issues No. 4 & 5:

15. In view of the aforesaid findings recorded by me in respect of three issues the other two issues are not required to be decided as the suit is held not to be maintainable and without any cause of action. Thus the plaint stands rejected.