

(2022) 10 DEL CK 0077

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 775 Of 2022, Civil Miscellaneous Application No. 34338 Of 2022

Amit Vats And Anr

APPELLANT

Vs

Ajay Jain

RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(b), Order 7 Rule 11(c), Order 7 Rule 11(d)

Citation : (2022) 10 DEL CK 0077

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Mukesh Anand, Amreek Singh

Final Decision : Dismissed

Judgement

C.Hari Shankar, J

1. This petition, under Article 227 of the Constitution of India, assails order dated 26th July 2022, passed by the learned Additional Senior Civil Judge ("the learned ASCJ") in CS 1228/21 (Ajay Jain v. Amit Vats), by which the learned ASCJ has rejected the application of the petitioner, as the defendant in the said suit, under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), seeking dismissal of the suit instituted by the respondent against the petitioners.

The plaint

2. Inasmuch as the impugned order has been passed on an application filed by the petitioners under Order VII Rule 11 of the CPC, it is necessary to briefly note the case set up by the respondent, as the plaintiff in the plaint.

3. The suit deals with a property situated at A-31, Yojana Vihar, Delhi, particularly the upper ground floor, first floor and terrace (the suit property) thereof. I may note, even at this juncture, that there is, in the plaint, some

degree of contradiction, inasmuch as, in para 2 of the plaint, it is averred that the suit premises were purchased by the wife of the respondent, whereas, in paras 4 and 5, the respondent claims to have purchased the suit premises himself.

4. As against this, as per the averments in the plaint, Petitioner 1 is the owner and Petitioner 2 and his family members are the occupiers of the second and third floor of the property at A-31, Yajana Vihar, Delhi.

5. Paras 2, 4, 5 to 10 and 14 of the plaint, which set out the basis for the rights asserted by the petitioners, may be reproduced thus:

"2. That wife of the plaintiff namely Akansha Jain is the owner and plaintiff and his family members are the occupier of Upper Ground Floor and First Floor alongwith the terrace floor of building no.A31, Yojna Vihar, Delhi. The Wife of the plaintiff has purchased the said portion vide registered sale deed No.7105 in book no.I, Vol No.2005 on page no.64 to 73 on dated 13-9-2019 and thumb impressions have taken in the presence of Sub Registrar IV b Vivek Vihar Delhi from the erstwhile owners i.e. Sh. Lokesh Tayal. The building was constructed by the builder comprising of the Stilt, Upper ground floor, First floor, Second floor, Third floor and terrace. It is mentioned in the sale deed that "Whereas the vendor is the absolute owner and in possession of 50% share of entire built up freehold residential property bearing No.A-31(Plot No.31, Block-A), Land Area Measuring 222.10 Sq.Mtrs. Having its plinth/covered area measuring 832.85 Sq. Mtrs (Approx.) Alongwith its whole of the structure according to the site thereon, consisting of stilt plus four storey thereon, with roof/terrace rights, with the rights to further/upper storey construction upto the last storey, fitted with electricity and water connection in running condition, situated in the layout plan of planning commission cooperative house building society ltd. presently colony known as "Yojna Vihar", Delhi-110092."

4. That the Upper Ground and First floor and the terrace rights' have been purchased by the Plaintiff alongwith the common areas and facilities like the right to use all entrances, common lift facility, passages, staircases upto terrace, their own servant quarters, and toilet, driveway, parking, and store and other common facilities as are available in the said building etc. There is an Cinema House constricted in Stilt Area and two servant room at the roof of the building in question in which wife of the Plaintiff has 50% equal share as per sale deed.

5. That plaintiff had purchased the Upper Ground & First floor of the property and has also purchased 50% rights in the stilt area/Cinema portion/storeroom/servant quarter at the top for using the same for the purposes alongwith parking although defendant no.1 with his anti social elements used to drink liquor and see movies in loud volume in the portion of Cinema hall at stilt area and create hindrance in the peaceful life of the plaintiff.

6. That there is a installed lift in the premises as per sanction plan from Schindler India Pvt Ltd. Defendant was informed about the fact that he can also use the lift for his Third and fourth floor portion subject to his sharing the expenses including the maintenance and running expenses regarding which a talks were held between the parties.

7. That the expenses for the running of the lift in the said building, such as salary of the liftman, periodic maintenance charges, electricity consumption charges etc shall be paid by the owners/occupants of the first floor, second floor and third floor (including terrace) proportionately. Under no circumstances the occupants of the lower floor be exempted from the proportionate charges for running the said lift and other common maintenance, irrespective of the fact as to whether they are using or enjoying the said facilities or not and till date no due remain on the plaintiff.

8. That the Plaintiff has a right to use and enjoy common area services and shall also proportionately share the expenses incurred from time to time for the maintenance of the said common services with the other occupants of the said building.

9. That there shall be no interference on the terrace of any occupants, including the area of two servant quarters which has been provided for the plaintiff's exclusive use.

10. That the Plaintiff has been provided staircase in the front side of the building from ground floor to top floor for access to all servant quarters on terrace and the access to the same shall not be disturbed by the defendants from the main staircase.

14. That the Plaintiff has, as a matter of right, the right to use all entrances, common lift facility, passages, staircases upto terrace, their own servant quarters, and toilet, driveway, parking, and other common facilities as are available in the said building."

6. The plaint alleges that the respondent had the right to use and enjoy the common areas in the suit property. Though Mr. Mukesh Anand, learned Counsel for the petitioners sought to contend, with considerable emphasis, that the respondent was predicated his right solely on the basis of a sale deed dated 12th September 2019, a copy of which was filed with the plaint, I am unable to subscribe to that contention. A holistic reading of the afore-extracted passages from the plaint, indicate, rather, that the sale deed dated 12th September 2019 has been cited in the plaint only to indicate the right of ownership, over the suit property, of the wife of the respondent. The respondent is apparently asserting his rights on the basis of possession over the suit property, rather than ownership. It is well settled that possessory rights have their own significance, and exist independent of titular rights. As has been repeated by the Supreme

Court on several occasions, the law respects possession, and rights which flow from long or settled possession are entitled to due protection.

7. Read any which way, the claim of the respondent in the plaint cannot be said to be founded solely on the sale deed executed in the name of the respondent's wife, though, undoubtedly, the said sale deed, as well as the titular rights that the respondent himself claims over the suit property have also been cited as grounds to support the claim in the suit.

8. A written statement was filed in response to the plaint.

9. Prior thereto, the petitioners had moved an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint. The said application stands dismissed by the learned ASCJ vide the impugned order dated 26th July 2022.

10. The reasoning of the learned ASCJ, in dismissing the petitioners' application, is to be found in paras 6 and 7 of the impugned order, which read thus:

"6. The ground taken by defendants is that the plaint does not disclose a cause of action in so much as the plaintiff is not the owner of suit property and has no right qua the same.

At this stage, it is pertinent to examine the scope of Order 7 Rule 11 CPC. It has been held, time and again, that the application under Order 7 Rule 11 CPC has to be examined with reference to the averments of plaint and documents therewith. The WS or documents filed by the defendant cannot be considered at this stage. Reliance in this regard is placed on *Gunjan Khanna & Anr (Ms.) Vs. Mr. Arunabha* Suit No. 149/ 15 page No. 2/ 11 *Maitra 2010 IV AD (Delhi) 258* and *Saleem Bhai & Or. Vs. State of Maharashtra and Others (2003) 1 sec 557*. It was observed that, "For the purpose of deciding an application under clause (a) to (d) of Rule 11 of order 7 CPC, the averments in the plaint are germane the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage"

The law regarding "cause of action" is no longer *res integra* and there are plethora of judgments on this aspect. Reliance in this regard has been placed on the judgments of Hon'ble Supreme Court in *Swamy Atmananda Vs. Shri Ramkrishna Tapovanam (2005) 10 SCC 51* and *Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 sec 706*. Cause of action implies bundle of facts that are material and relevant for the decision of the case and which are required to be provided by the plaintiff to be entitled for reliefs claimed in the suit.

The fact that the wife of plaintiff is the owner of suit property has not been denied by defendants. It is further not denied by the defendants that the plaintiff is residing along with his family in the suit property. One of the primary incidence of possession is peaceful enjoyment of the property in possession and merely because the title of the suit property does not vest in the plaintiff, he cannot be deprived of a right to sue in respect of peaceful possession and enjoyment therein.

At this stage, it is pertinent to mention the judgment of Hon'ble Delhi High Court in Puja Aggarwal Vs. Pravesh Narula, wherein it was observed that:

"17.... Thus, the Trial Court would be justified in putting an end to vexatious, frivolous, meaningless and sham litigation. But this power may be exercised only where the plaint clearly discloses no cause of action or any of the grounds contained in Order VII Rule 11 CPC are made out and otherwise. This is so as the consequences of such exercise of power are immediate and decisive and shuts the door of the court firmly upon a plaintiff who ostensibly approached it for legal remedy"

Further, non-joinder of necessary party is not one of the grounds mentioned in Order 7 Rule 11 for rejection of plaint. Nonjoinder of necessary party at best lead to the plaintiff being afforded an opportunity to implead the necessary party.

7. Upon a holistic reading of plaint and documents, the present suit is not barred by provisions of Order 7 Rule 11 CPC.

Consequently, present application is dismissed."

11. Mr. Mukesh Anand, learned Counsel for the petitioners has vociferously challenged the impugned order. He submits that, read as a whole, the respondent premises his right of possession, over the suit property, exclusively on the sale deed dated 12th September 2019, which has been filed along with the plaint and which has been executed solely in favour of the wife of the respondent. He submits that the plaint does not contain any material which would disclose a right accruing, in favour of the respondent, qua the suit property or the suit premises, as would sustain a valid cause of action for the purposes of the suit. Mr. Mukesh Anand has also emphasised the inherent contradiction in the plaint, inasmuch as, at one point, the respondent claims ownership of the suit property and at another states that his wife was the owner of the suit property. Mr. Mukesh Anand places reliance on the judgment of a Coordinate Bench of this Court in Irmeet Singh Kohli v. Ashok Kumar Batra 2017 SCC OnLine Del 10614.

12. Having heard Mr. Mukesh Anand, learned Counsel for the petitioner and Mr. Amreek Singh, learned Counsel for the respondent at considerable length, I do not find this to be a case in which, in exercise of the powers vested in it by Article 227 of the Constitution of India, this Court should interfere with the impugned order.

13. It is well settled that, while adjudicating an application under Order VII Rule 11 of the CPC, the Court is entitled to look only at the averments in the plaint, read with the documents filed therewith, and at nothing else. [Refer Mayar (H.K) Ltd. v. Vessel M.V Fortune Express (2006) 3 SCC 100] If the averments in the plaint read with the documents filed with the plaint, do not make out a case for rejecting a plaint on any of the grounds envisaged by Order VII Rule 11, the application must fail. It is equally well settled that, in undertaking the above

exercise, the Court has to view the plaint holistically, taking into account all the averments in the plaint. [Refer Madanuri Sri Rama Chandra Murthy v. Syed Jalal (2017) 13 SCC 174] The plaint, to employ a time worn cliché, has to be “read as a whole”.

14. Viewed thus, I am in entire agreement with the observations of the learned ASCJ that, as a person in possession of the suit property, the plaintiff had the locus to ventilate the rights claimed in the plaint. A conjoint reading of the passages from the plaint extracted in para 5 supra, would reveal that the plaintiff has not predicated his entire case on title. Rather, the case of the plaintiff appears more to be that, as a person in possession of the suit property, as the husband of the title holder in respect thereof, the respondent is entitled to peaceful possession thereof. Among the incidents of such peaceful possession, according to the petitioner, would be a right to use the common passage and, common services such as staircase, lifts, water tanks, servant quarters, lifts, cinema house, storeroom etc.

15. It cannot be said that the necessary factual averments, to base the said cause of action are wanting in the plaint. As to whether the plaintiff’s case can survive on the basis of the averments in the plaint and as to whether the plaintiff is entitled to the rights which are asserted in the prayers in the plaint, are matters of trial.

16. I am, therefore, in agreement with the learned ASCJ in her finding that, read as a whole, the plaint could not be said to be bad for want of a cause of action or as barred by any law for the time being in force.

17. No occasion arises, therefore, for this Court to interfere with the impugned order dated 26th July 2022 which is accordingly upheld.

18. The petition is accordingly dismissed. Miscellaneous application stands disposed of.

19. Mr. Mukesh Anand submits that the sale deed placed on record does not entitle the respondent to any of the rights that he has urged in the plaint.

20. It is clarified that the court has not examined the merits of the case and the observations in this order are to be treated as restricted to examine whether a case for rejection of the plaint under Order VII Rule 11 of the CPC existed or did not exist. All pleas available in law would remain open to both sides to be urged during the course of the trial.