

(2025) 06 DEL CK 0648

In the Delhi High Court

Case No : C.R.P. 146 Of 2023 & Civil Miscellaneous Application No. 29713 Of 2023

Kishan Chand

APPELLANT

Vs

Bhagat Ram

RESPONDENT

Date of Decision : 23-06-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 115, Order 7 Rule 11, Order 7 Rule 11(a),
Order 7 Rule 11(d)
Specific Relief Act, 1963 — Section 6, 6(1), 6(2)

Citation : (2025) 06 DEL CK 0648

Hon'ble Judges : Amit Mahajan, J

Bench : Single Bench

Advocate : Vikram Gujral, Akanksha Singh, Aryan Kalia, Subhankar Sharma

Final Decision : Allowed

Judgement

Amit Mahajan, J

1. The present petition is filed under Section 115 of the Code of Civil Procedure, 1908 ('CPC') challenging the order dated 08.05.2023 (hereafter 'the impugned order') passed by the learned Additional District Judge ('ADJ'), Saket Courts, New Delhi, in CS No. 505/2022.

2. By the impugned order, the learned Trial Court dismissed the application filed by the petitioner under Order VII Rule 11 of the CPC, seeking rejection of the plaint filed by the respondent, Bhagat Ram.

3. The brief facts of the case are as follows :

a. The suit was filed by the respondent/plaintiff, inter alia, seeking recovery of possession under Section 6 of the Specific Relief Act, 1963 ('SRA'), along with reliefs of permanent and mandatory injunction and rendition of accounts in respect of property bearing No. 491, Hardevpuri, Gautam Nagar, New Delhi-110049 (hereafter 'the suit property').

b. It is the case of the respondent that the suit property was originally owned by his father, Late Shri Prithi Singh, who allegedly executed a Will dated 12.05.1982 bequeathing the entire property to his wife Smt. Khimo Devi for life. Thereafter, vide Will dated 14.05.1985, she bequeathed the property to the plaintiff. Upon her death in 1999, the plaintiff claims to have become the sole and absolute owner of the suit property.

c. The plaintiff states that in the 1970s, his father permitted his daughter Smt. Shyama Devi and her husband Ved Prakash to reside in 2–3 rooms, a kitchen, and toilet on the ground floor as gratuitous licensees. Additional construction was allegedly carried out in 1992, during which Ved Prakash contributed to the costs, pursuant to which it was orally agreed that he could reside without paying rent and collect rental income until reimbursement of expenses. It is alleged that the arrangement was temporary and revocable.

d. According to the plaintiff, Ved Prakash continued in occupation after the death of the plaintiff's sister and refused to vacate when asked in July–August 2021. A police complaint dated 24.08.2021 was filed by the plaintiff, alleging that Ved Prakash forcibly dispossessed him from two rooms on the ground floor, removed his personal belongings, and let out the rooms to tenants.

e. It is further averred that on 17.04.2022, Ved Prakash vacated the premises overnight. Upon visiting the property the next day, the plaintiff allegedly found that the defendant, Kishan Chand/petitioner (his brother), had entered the house, locked the premises from inside, and threatened the plaintiff when he tried to enter. The plaintiff alleges that his valuables, including cash, a gold chain, a television, and a refrigerator, were missing and that he was wrongfully restrained from accessing the suit property.

f. The plaintiff claims that he was in constructive possession of the entire property, and that Kishan Chand, in collusion with Ved Prakash, forcibly entered and dispossessed him without following due process of law.

g. The petitioner/defendant filed an application under Order VII Rule 11 CPC seeking rejection of the plaint, inter alia, on the grounds that the plaintiff's suit is barred by limitation, does not disclose any cause of action against the petitioner, and is vague and lacking in material particulars such as site plan, area, and proof of possession. It is also contended that the plaintiff himself admitted being dispossessed by Ved Prakash on 24.08.2021, and not by the petitioner.

h. By the impugned order dated 08.05.2023, the learned Trial Court dismissed the application under Order VII Rule 11 CPC, holding that the plaintiff had pleaded a triable cause of action and that the issues of limitation and valuation involved mixed questions of law and fact.

i. Aggrieved by the impugned order, the petitioner has preferred the present revision petition before this Court.

4. The learned counsel appearing on behalf of the petitioner submitted that the

petitioner has approached this Court challenging the impugned order under the revisional jurisdiction of this Court, since the impugned order passed by the learned Trial Court is erroneous, illegal and unjustified.

5. He submitted that the suit filed by the respondent/plaintiff under Section 6 of the SRA is not only devoid of merit but is liable to be rejected at the threshold under Order VII Rule 11 of the CPC. He contended that the plaintiff was never in settled possession of the suit property, and the facts disclosed in the plaint itself contradict the essential legal ingredients required to maintain a suit under Section 6 of the SRA.

6. It was pointed out that the plaintiff in the suit claimed possession over the entire house, yet simultaneously alleged that two rooms on the ground floor were in his possession, while the rest of the property was in the possession of his brother-in-law, Ved Prakash, who was residing in the house as a gratuitous licensee. In his complaint to the police dated 24.08.2021, the plaintiff specifically stated that Ved Prakash had dispossessed him from two rooms on the ground floor. The rest of the house was already under Ved Prakash's occupation. Therefore, even according to the plaintiff's own version, he was not in possession of the entire house, but only of two rooms, from which he claims to have been forcibly dispossessed.

7. He submitted that the plaint does not enclose any site plan or description of the property that would demarcate or identify the portion allegedly under the plaintiff's possession. The suit was filed for recovery of possession of the entire property, not limited to the two rooms. He further submitted that lack of clarity in the plaint, absence of demarcation, and shifting claims regarding possession, show that the suit is vague, illusory, and does not disclose a clear cause of action.

8. He emphasized that the plaintiff himself admitted in the police complaint dated 24.08.2021 that Ved Prakash had dispossessed him from two rooms, and that Ved Prakash had assured the police he would return possession to the plaintiff or the defendant, depending on mutual settlement. On this factual backdrop, the learned counsel argued that even the plaintiff's own narrative does not establish settled or juridical possession, nor does it show that the petitioner ever used force or unlawfully dispossessed the plaintiff.

9. He submitted that the plaintiff has claimed that he was dispossessed on 17.04.2022, when he found the petitioner inside the house and even this alleged entry by the petitioner was with the knowledge and consent of Ved Prakash, who was in occupation of the house and had authority over it. Thus, even if Ved Prakash gave the keys or possession to the petitioner, the same cannot amount to "dispossession" under Section 6 of the SRA, as possession transferred by an occupant to another does not give rise to a claim of illegal dispossession by the new occupant.

10. He submitted that since the plaintiff himself admitted being dispossessed on 24.08.2021, the suit, filed on 23.07.2022, is clearly barred by limitation, having

been instituted after the expiry of six months as prescribed under Section 6(2) of the SRA.

11. Lastly, he submitted that the valuation of the suit is incorrect and the suit is under-valued, with no site plan, area measurement, or breakup of claims. Hence, it is submitted that the plaint is liable to be rejected.

12. Per Contra, the learned counsel for the respondent submitted that the application under Order VII Rule 11 of the CPC was misconceived and liable to be dismissed. It was contended that the suit had been filed under Section 6 of the SRA, seeking possession of the suit property from the petitioner, who had unlawfully taken over possession without the consent of the respondent and without recourse to due process of law.

13. It was submitted that the respondent had been in settled and juridical possession of the suit property, including portions on the ground floor and constructive possession of the entire property, prior to the incident dated 17.04.2022, when the petitioner allegedly entered the property unauthorisedly after Ved Prakash vacated the same. The respondent claimed that Ved Prakash was merely a gratuitous licensee and had never held any ownership or legal interest in the suit property. It was further argued that any act by Ved Prakash in delivering possession to the petitioner was illegal and without authority, and thus the entry of the petitioner amounted to dispossession as contemplated under Section 6 of the SRA.

14. The learned counsel denied that the suit was time-barred and contended that the question of limitation involved mixed questions of law and fact, which could only be adjudicated upon trial and not at the preliminary stage.

15. Lastly, it was contended that the plaint must be read as a whole, and that on a meaningful reading, it clearly disclosed a triable cause of action against the petitioner, and hence, could not be rejected at the threshold. The respondent emphasized that disputed questions relating to possession, title, and factual allegations could not be resolved without evidence, and that the petitioner sought to pre-empt the adjudication of these issues through a premature application.

Analysis

16. At the outset, it is relevant to note that the petitioner has challenged the impugned order by invoking the revisional jurisdiction of this Court. It is trite law that the scope of revision under Section 115 of the CPC is very limited and is to be exercised only if the subordinate Court appears to have exceeded its jurisdiction or to have failed to exercise its jurisdiction, or if the subordinate Court has exercised its jurisdiction illegally or with material irregularity.

17. This Court also considers it apposite to appreciate the law in relation to Order VII Rule 11 of the CPC. The said Rule provides for summary dismissal of a suit at the threshold, before the parties have led their evidence, if one of the grounds

stipulated therein is made out. The purpose of the said provision is to stifle sham civil actions and quell bogus and meaningless suits at the outset when the said suits ex facie appears to be an abuse of the process of law, without further wasting judicial time.

18. In the present case, the application under Order VII Rule 11 of the CPC was premised on the argument that the plaint does not disclose a cause of action for dispossession under Section 6 of the SRA, and that the suit is barred by limitation, having been instituted beyond six months from the alleged date of dispossession.

19. Considering that the power to terminate the action without even allowing the plaintiff to lead evidence and establish its case is a drastic one, the Court is required to limit itself to discerning whether the plaint prima facie discloses a cause of action by perusing the substance of the averments, without paying any heed to the pleas taken in the written statement. While the Court is not precluded from intervening when the litigation is manifestly vexatious, at the same time, if a prima facie case is made out, it is not open to the Court to conduct an enquiry into the merit or trustworthiness of the allegations.

20. The Hon'ble Apex Court in the case of Dahiben Vs. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366 has succinctly discussed the law in relation to Order VII Rule 11 of the CPC. The relevant portion of the same is reproduced hereunder:

"23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court....

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512],

read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed...

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

(emphasis supplied)

21. In this backdrop, the short question before this Court is whether the plaintiff/

respondent has pleaded facts that constitute unlawful dispossession within the meaning of Section 6(1) of the SRA, and whether the plaint discloses any legally cognizable cause of action against the petitioner/defendant.

22. The subject suit No. CS 505/2022 was filed by the petitioner under Section 6 of the SRA, which reads as under:

“6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

23. On a careful reading of the plaint, it becomes evident that the plaintiff's case rests on the premise that he was dispossessed from the suit property when he found the petitioner inside the premises on 17.04.2022.

24. It is relevant to note that the plaintiff himself had filed a police complaint on 24.08.2021 alleging that he has been dispossessed by his Brother-in-Law, Ved Prakash, from two rooms on the ground floor. The said complaint appears to have been settled. Ved Prakash, thus, admittedly, is in possession of the suit property on being permitted by the plaintiff. The petitioner is also stated to be brother of the plaintiff who, even as per the case of the plaintiff, started residing on being permitted by Ved Prakash. The plaintiff's own police complaint dated 24.08.2021, filed nearly eight months earlier, thus, contradicts the claim as alleged in the plaint.

25. The plaintiff had admitted that the property apart from two rooms were in the occupation of Ved Prakash, who was residing in the house as a permissive occupant or gratuitous licensee since the 1970s. As per the plaintiff's own pleadings, Ved Prakash had been staying in the property for decades, and even collected rent from tenants on the first floor. Thus, actual physical possession of the property was not with the plaintiff, either on the date of the suit or at any time within six months prior to filing the suit.

26. Crucially, the plaintiff does not allege that the petitioner forcibly entered the premises by ejecting the plaintiff. Instead, the petitioner is said to have entered the property with the consent or cooperation of Ved Prakash, who was in

occupation of the suit premises. Even if Ved Prakash had no legal authority to induct the petitioner, such entry would not amount to unlawful dispossession under Section 6 of the SRA, since no forcible removal of the plaintiff occurred.

27. This distinction is significant. The concept of 'dispossession' under Section 6 of the SRA requires that the defendant must have removed the plaintiff from settled possession by unlawful means. Merely entering into possession through a third party who is already in occupation — even if such third party has no legal right to induct another person — does not constitute unlawful dispossession.

28. It is well settled that in order to succeed in a suit under the said provision, the plaintiff must establish that he was in possession of the suit premises, six months prior to the institution of the suit.

29. The Hon'ble Apex Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das* : (2020) 1 SCC 1, while discussing the requirement of long, uninterrupted and peaceful enjoyment of an incorporeal right for the applicability of the doctrine of lost grant, described the general interpretation of the term 'possession', which reads as under:

"312. In *Supt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja* [Supt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] , this Court observed that "possession is a polymorphous term" and, therefore, it was not possible to ascribe a meaning which would apply in every context. Drawing sustenance from Salmond's Jurisprudence, the Court noted that possession implies a right and a fact; the right to enjoy annexed to the right to property and the fact of the real intention. Possession as a concept comprehends "corpus possessionis and animus possidendi". The former embraces the power to use the thing in possession and the existence of a ground of expectation that the use of the possession shall not be interfered with. The latter postulates the intent to appropriate to oneself the exclusive use of the thing which is possessed."

(emphasis supplied)

30. Even assuming the plaintiff retained some legal claim or title over the property, the remedy under Section 6 of the SRA is not available unless there is an actual forcible dispossession. The entry of the petitioner into the premises upon being permitted by Ved Prakash, who was already in occupation, does not fulfill the essential element of 'dispossession'. At best, the plaintiff may have a civil remedy in title or ownership, but not under Section 6 of the SRA, which is designed to preserve the sanctity of possession regardless of ownership.

31. The plaintiff has also failed to file any site plan, measurement, or proof of possession of any identifiable portion of the suit property. The pleadings are vague and self-contradictory. A suit for possession must be premised on demonstrable control over a defined area. Absent such averments, the plaint lacks the material particulars necessary to sustain an action for possession.

32. In view of the above discussion, this Court is of the opinion that the plaintiff was not in possession of the suit premises, that he was not dispossessed by the petitioner, and that even assuming some grievance exists, it does not amount to dispossession as understood under Section 6 of the SRA.

33. In view of the aforesaid discussion, the impugned order is set aside. Consequently, the plaint of the respondent is rejected under Order VII Rule 11 of the CPC.

34. The present petition is allowed. Pending application also stands disposed of.