

(2007) 11 DEL CK 0017
In the Delhi High Court
Case No : CS (OS) No. 1158 of 2005

Smt. Bimla Rai and Another	Vs	APPELLANT
Smt. Sadhana Rai and Others		RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 13, 151
Delhi High Court Rules and Orders — Rule 5
Registration Act, 1908 — Section 17, 49
Transfer of Property Act, 1882 — Section 123

Citation : (2007) 11 DEL CK 0017

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sandeep Mittal, for the Appellant; Harish Malhotra and Vibhu Bakhru, for defendant Nos. 1 and 2 and Arvind Nigam, for defendant Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

IA No. 13727/2007

1. This is an application by the defendant Nos.1 and 2 for rejection of the plaint under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure.
2. The applicant has contended that the plaintiff has filed this suit for partition and permanent injunction. According to the applicant the plaintiff has admitted that the property bearing No. 12, Aurangzeb Lane, New Delhi, land and the superstructure has been given on perpetual lease dated 22nd December, 1931 by the Central Government in favor of R.B.Sardar Baisakha Singh. According to the applicant the perpetual lease has a prohibition that the rights in the property shall not be assigned, transferred without the approval in writing of the Chief Commissioner of Delhi.

3. The applicant has contended that the property was purchased by three private limited companies namely M/s. Allied Finance (P) Ltd, M/s. Kulwant Rai and Sons (P) Ltd (now name changed and known as RKKR International (P) Ltd) and third M/s. Ram Kishan Kulwant Rai Industries (P) Ltd and the property has been mutated in their favor in the record of Land and Development office vide letter No. L1-9/11(5)/63.

4. According to the defendant Nos.1 and 2, one third undivided share is of M/s. Kulwant Rai and Sons (P) Ltd (now known as RKKR International (P) Ltd) which was purchased pursuant to a Court decree dated 16.10.1992 by M/s. New Peak Real Estate (P) Ltd.

5. Consequently, according to the applicants the property in dispute is owned by M/s. Allied Finance (P) Ltd, M/s. New Peak Real Estate (P) Ltd and M/s. Ram Kishan Kulwant Rai Industries (P) Ltd.

6. The applicant in the circumstances has contended that the suit is misconceived, uncalled for and is an abuse of the process of Court as plaintiffs and defendants are not the co-owners of the property in question, as the ownership vests with three private companies who are separate legal entities under the provisions of Indian Companies Act and, Therefore, there is no cause of action and plaintiffs have no right to maintain the suit.

7. It has also been contended that plaintiffs have admitted that a registered perpetual lease deed dated 27.2.1974 was executed by the then landlords in favor of defendant No. 3 at Rs. 825/- per month in respect of an undivided share in the aforesaid property and another perpetual lease deed dated 1.3.1974 was executed in favor of Sh. Jaswant Rai (brother of defendant No. 3) at Rs. 825/- per month in respect of an undivided share in the said property. According to the applicant plaintiffs have also admitted that a registered perpetual lease deed dated 1.3.1974 was executed by the landlords in favor of defendant No. 2 at Rs. 600/- per month.

8. The applicant has relied on the averments made by the plaintiffs that by letter dated 12.3.1992 by Shri Jaswant Rai, defendant No. 4 was substituted as lessee with the consent of the Lessers.

9. According to the applicants the transfer of leasehold rights by Sh. Jaswant Rai by letter dated 12.3.1992 in favor of Sh. Anil Rai is void for want of proper stamp, lack of registration and absence of attestation by two witnesses with the effect that the leasehold rights have not been transferred from Sh. Jaswant Rai to Sh. Anil Rai.

10. The rejection of the plaint has also been sought on the ground that the plaintiffs have alleged that defendant Nos.2, 3 and 4 have gifted their perpetual leasehold/tenancy rights to plaintiff No. 1, defendant No. 1 and plaintiff No. 2 respectively vide gift deeds dated 1.4.2000. According to applicants the gift deeds are void and of no consequence as they are neither registered nor attested

by two attesting witnesses as mandatorily required and thus are barred by Section 123 of the Transfer of Property Act, Section 17 of the Registration Act and are also not duly stamped as required under the Stamp Act and some gift deeds are inadmissible as evidence and of no effect and since the leasehold rights were never transferred to Sh.Anil Rai, Therefore, question of further gift from Sh.Anil Rai to plaintiff No. 2 does not arise.

11. The applicants have asserted that plaintiff Nos.1 and 2 have not acquired any leasehold/tenancy rights in the suit premises and, Therefore, they do not have any locus standi. Rejection of plaint is also sought on the ground that the property 12, Aurangzeb Lane, New Delhi is governed by Delhi Rent Control Act as all the tenancies are below Rs. 3500/- per month and the provisions of Delhi Rent Control Act are applicable and even the combined rent of the three tenancies is less than Rs. 3500/- per month and under the Delhi Rent Control Act there is a bar to subletting and, Therefore, the suit is not maintainable and the plaint is liable to be rejected. The applicant has also sought rejection of the plaint on the ground that Court fees has not been properly paid as the value of the suit is not less than Rs. 60 crores and the plaintiffs are liable to pay advalorem Court fees for Rs. 60 crores.

12. The rejection of the plaint is also sought on the ground that the plaint has not been signed, verified and filed in accordance with the provisions of Delhi High Court Rules and of the CPC and that the verification of the plaint is defective and that the suit is bad and non maintainable for non joinder of necessary parties as the Lessers of the demised premises comprising in 12, Aurangzeb Lane, New Delhi are necessary parties. In any case it has been sought that tenants are not entitled for partition of tenanted premises without express written consent of the Lessers.

13. The plaintiff has filed the present suit for partition and permanent injunction contending inter-alia that plaintiffs and defendants are members of Rai family with defendant No. 3 being its patriarch being the husband of plaintiff No. 1 and father of defendant No. 2 and defendant No. 4 and father-in-law of plaintiff No. 2 and defendant No. 1. According to the plaintiffs defendant No. 3, defendant No. 2 and defendant No. 4 acquired leasehold rights in respect of one-third share each under the perpetual lease deeds dated 27.2.1974, 1.3.1974 and another perpetual lease deed dated 1.3.1974, the details of which are given in para 3 of the plaint. It is also asserted that plaintiff No. 1, plaintiff No. 2 and defendant No. 1 are the wives of defendant No. 3, defendant No. 4 and defendant No. 2 respectively and in order to secure their wives defendant No. 3 gifted his leasehold rights in favor of defendant No. 1, however, retaining his rights to live in the said property during his lifetime and defendant No. 4 gifted his leasehold rights in the said property in favor of plaintiff No. 2 and defendant No. 2 gifted his leasehold rights in the said property in favor of plaintiff No. 1 and this was incorporated in declaration of gift deed dated 1.4.2000.

14. The plaintiffs have also contended that now there are three units of Rai

family one comprising of plaintiff No. 1 and defendant No. 3, second comprising of plaintiff No. 2 and defendant No. 4 along with family members and third comprising of defendant No. 1 and defendant No. 2 along with their family members. All the three units are in possession of different areas which are shown in the plan with the inks pink, blue and red whereas the green areas are common areas.

15. According to the plaintiffs an agreement was executed between the parties which was titled as 'The Rai Family Agreement' dated 19th March, 2000 which has been partly implemented where it was agreed that all the three units will have one third of the property.

16. The plaintiff has sought partition detailing the facts on account of another communication between the defendant Nos.1 and 2 on the one hand and other family members on the other leading to the tension between them and, Therefore, the demarcation of the property in three units have been claimed which is according to the plaintiff necessary as three units are the joint lessees for the purposes of peaceful and proper enjoyment of the said property as per their respective shares.

17. Rejection of a plaint is a serious matter as it non suits the plaintiff and kills the cause of action. It cannot be ordered cursorily without satisfying the requirement of the said provision. To decide under Order VII Rule 11 of the Code of Civil Procedure, averments in the plaint have to be read without looking at the defense and thereupon it has to be seen whether on the averments made in the plaint, Order VII Rule 11 get attracted or not and from the averments made in the plaint it has to be seen whether the jurisdiction of the Court is made out or not and whether the suit is barred by any law or plaint does not disclose any cause of action. Reliance for this proposition can be placed on 2005 IV AD (Delhi) 541, Kanwal Kishore Manchanda v. S.D. Technical Services Pvt. Ltd. 2005 II AD (Delhi) 430 , Asha Bhatia Vs. V.L. Bhatia, , Asha Bhatia v. V.L. Bhatia 2003 V AD (Delhi) 370 , Condor Power Products Pvt. Vs. Sandeep Rohtagi, , Condour Power Products Pvt. Ltd. v. Sandeep Rohtagi.

18. To ascertain whether the plaint discloses cause of action or not the averments made in the plaint only have to be seen. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is, if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed or not. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of

law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In *Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another*, the Supreme Court held: (AIR pp.943-44, para 9)

By the express terms of Rule 5 Clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defenses which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, *prima facie*, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.

19. Therefore, if the plaint discloses some cause of action or raises some questions which require to be adjudicated or decided by the judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. In ascertaining whether the plaint shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff. It cannot take into consideration the defenses which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact.

20. For consideration whether the plaint discloses cause of action or not the pleas and documents of the defendants are not to be considered. In *D. Ramachandran Vs. R.V. Janakiraman and Others*, the Apex Court had held that effect of dismissal of a suit is altogether different and distinct from the effect of rejection of the plaint. The Apex Court had held as under:

Learned Single Judge fell in error in placing reliance upon the material supplied by the defendant, which alone is sufficient to set aside the impugned order. Learned Single Judge instead of proceeding to reject the plaint dismissed the suit, which approach is also erroneous. The effect of dismissal of suit is altogether different and distinct from the effect of rejection of the plaint. In case plaint is rejected under Order 7 Rule 11, CPC, filing of a fresh plaint in respect of the same cause of action is specifically, permitted under Rule 13 of Order 7, CPC. Altogether different consequence follows in the event of dismissal of suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of

action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. While deciding the application under Order 7 Rule 11, CPC, learned Single Judge ought not and could not have dismissed the suit. Even in the decision of the Supreme Court in T. Arvindandam's case (Supra), relied upon by learned Counsel for the appellant, it was held that if on a meaningful- not formal-reading of the plaint it is manifestly vexatious and merit-less, in the sense of not disclosing a clear right to sue, the Trial Court should exercise his power under Order 7 Rule 11, CPC taking care to see that the ground mentioned therein is fulfilled. In order to fulfill that ground bare allegation made in the plaint and documents filed therewith were required to be looked into, which in the instant case clearly disclosed at least a cause of action against the defendant that defendant was liable for damages for its acts of omission and commission. It would be an altogether different situation that the plaintiff might not ultimately succeed in obtaining a decree against the defendant or that Court might come to the conclusion that suit would not be maintainable against the defendant and that plaintiff had a cause of action only against defendant's principal and its parent until in Hong Kong, but such aspect could not have been gone into at this stage. Three paragraphs of the plaint quoted above in our view do clearly disclose cause of action for the plaintiff to claim damages.

21. Perusal of the entire plaint reflect that three units of this family one comprising of plaintiff No. 1 and defendant No. 3, second comprising of plaintiff No. 2 and defendant No. 4 along with family members and third comprising of defendant No. 1 and defendant No. 2 along with their family members are seeking of segregation of their portions in the property. All the three units are in possession of different areas which are shown in the plan with the inks pink, blue and red whereas the green areas are common areas. This is not denied that the lease deeds were executed in favor of defendant Nos. 2 and 3 and Shri Jaswant Rai.

22. If the defendant No. 2 and 3 and Shri Jaswant Rai were the lessees, whether they could create further lease in favor of others without the written consent of the landlord of the premises, is the main dispute raised by the applicant. Whether a tenant can gift the tenancy rights and on such gift the tenancy in favor of the tenant will be extinguished and a new tenancy will be created in favor of the donee or the donee will be sub lessee or will have independent rights is to be ascertained on the basis of the plea of the applicant. If one reads the entire plaint, it emerges that three units of family seek different portions of the tenanted property and out of these three units the lease deeds in favor of defendant No. 2 and defendant No. 3 are admitted. Regarding the third unit the lease deed is in favor of Shri Jaswant Rai who has attorney the tenancy in favor of his brother Defendant No. 4. Whether he can do it or not requires consideration, in the peculiar facts and circumstances of the case. What also has to be determined whether defendant No. 2,3 and 4 could transfer assign the

rights in favor of plaintiff Nos. 1 and 2 and defendant No. 1. The rejection of the plaint is also sought on the ground that the Lesser of the premises is a necessary party in the facts and circumstances of the case. Whether the landlord(s) are necessary parties to the suit for division of tenancy rights is a plea in defense which may not be considered for rejection of the plaint in the facts and circumstances of the case. The Apex Court has held that the purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. In ascertaining whether the plaint shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff nor can take into consideration the defenses raises by the defendants nor it is appropriate for the Court to make an elaborate enquiry into complicated question of law or fact.

23. There are three units of family which are seeking partition, segregation of their portion so that these units may live in harmony. Even if the alleged gift deeds in favor of some of them are ultimately held to be not valid on the basis of objections raised by the applicant, regarding gift deeds not in accordance with and barred u/s 123 of the Transfer of Property Act and section 17 and 49 of the Registration Act, the lease deeds in favor of other member of the three units are valid and Therefore, whether the lease hold rights can be divided or not has to be adjudicated especially because the status of the parties in the suit of partition, co-lessee i.e plaintiffs and the defendants shall be same. The Supreme Court had held that the Court does not to have to see whether the claim made by the plaintiff is likely to succeed but it has merely to satisfy itself that the allegations made in the plaint, if accepted as true, would entitle the plaintiff to the relief he claims. In ascertaining whether the plaint shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff. The Court should not and cannot take into consideration the defenses which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact for rejection of the plaint.

24. A fortiori, this Court will not go into question whether the parting of portion of tenancies are barred under the provision of the Delhi Rent Control Act, 1958 for the purposes of determining whether the plaint is liable to be rejected or not. In any case whether the alleged gifts by some of the lessees will amount to sub letting or not and will be barred under the Delhi Rent Control Act will give a cause of action to the Lesser of the premises and not to some of the co-lessee. Under the Rent Control Act, 1958 the bar against parting of the possession or assignment or subletting depends on the consent of the landlord. If the landlord has consented or does not take action, some of the sub lessees cannot take this plea and seek rejection of the plaint on this ground.

25. Similarly on the ground that the plaint has not been signed, verified and filed in accordance with the provisions of Delhi High Court Rules and of the CPC and that the verification of the plaint is defective and that the suit is bad and not

maintainable for non joinder of necessary parties as the Lessers of the demised premises comprising in 12, Aurangzeb Lane, New Delhi are necessary parties are the defenses raised by the defendants/applicants on these grounds the plaint cannot be rejected.

26. The issues in this matter has not yet been framed. In case after issues are framed and some of the issues can be treated as preliminary issues which can be decided without evidence and which will be issues purely on law, the suit can be dismissed but on these allegations as has been raised by the defendants/applicant the plaint cannot be rejected. The Apex Court in D. Ramachandran (supra) had held that the rejection of the plaint is different from dismissal of the suit as the effect of dismissal of suit is altogether different and distinct from the effect of rejection of the plaint. In case plaint is rejected under Order 7 Rule 11, CPC, filing of a fresh plaint in respect of the same cause of action is specifically, permitted under Rule 13 of Order 7, CPC. Altogether different consequence follows in the event of dismissal of suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. Consequently on the grounds as raised by the applicant, the plaint cannot be rejected in the present facts and circumstances.

27. For the aforesaid reasons, the application for rejection of the plaint by the applicant under Order VII rule 11 of the CPC is without any merit and it is dismissed.