

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.207/2007**

% **15th May, 2012**

SMT. CHAMPA JOSHI Appellant
Through: Mr. Rajat Aneja, Advocate with
Mr. S. Sethu Mahendran,
Advocate.

versus

MAAN SINGH & ORS. Respondents
Through: Mr. R.L. Kohli, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 18.11.2005 by which the trial Court allowed the application of the defendant No.3/respondent No.3 filed under Order 7 Rule 11 CPC and dismissed the suit as being without cause of action.

2. Before coming to the facts of the present case, I must observe that it is elementary that matters pertaining to merits of the

disputes i.e. whether a fact as alleged by the appellant/plaintiff is or is not correct or whether a fact as alleged by the respondents/defendants is or is not correct cannot be decided at the stage of pleadings, and surely such disputed questions of fact can only be decided at the stage of final arguments after both the parties have led their evidence. This is because what the plaintiff states in his plaint, as per the plaintiff is right, and what the defendant states in his written statement is, as per the defendant correct, however, who is right can only be decided after the evidence is led by the respective parties on the facts as stated in their pleadings.

3. The subject suit filed by the appellant/plaintiff was a suit for declaration, possession, mesne profits, mandatory injunction and permanent injunction. In the suit, the appellant/plaintiff claimed rights in the suit property bearing No.37B, forming part of khasra No.437, Jeevan Nagar/Bhagwan Nagar, New Delhi-14. Rights are claimed by the appellant/plaintiff inasmuch as he claims to have entered into an agreement to sell etc with the owner/defendant No.1-Sh. Maan Singh on 4.1.1991 and paid valuable consideration of ₹ 2,40,000/- out of the total price of ₹ 2,50,000/-. In the plaint, it is alleged that the appellant/plaintiff was put into possession by the defendant No.1 pursuant to the documentation dated 4.1.1991. The appellant/plaintiff thereafter alleges

dispossession by the defendant No.1 in terms of the averments made in para 7 of the plaint. The plaint which was originally filed was thereafter amended to include the facts with regard to the selling of the rights in the suit property (by means of the similar documentation executed in favour of the appellant by the defendant No.1) by the defendant No.1 to the defendant No.2 vide documentation dated 30.12.1996. This date of 30.12.1996 is mentioned because the defendant No.1 in the suit had filed an affidavit that he had sold rights in the suit property to the defendant No.2 by means of the documentation dated 30.12.1996. There are other averments in the plaint of the defendant No.2 by means of similar documentation dated 2.4.1997 transferring rights in the suit property to the defendant No.3. The plaint seeks restoration of possession, the related claim of mesne profits, the relief of mandatory injunction against the defendants to execute sale documents in favour of the plaintiff and also for restraining the defendants from further dealing with the suit property.

4. Defendants filed their written statements independently i.e. each of the three defendants filed a separate written statement. Defendant No.1 admitted entering into agreement to sell with the appellant/plaintiff on 4.1.1991, however, pleaded that the documentation created no rights in

favour of the appellant/plaintiff as the appellant/plaintiff paid only a sum of ₹ 35,000/- out of the total consideration of ₹ 2,50,000/-. With regard to possession being delivered to the appellant/plaintiff by the defendant No.1, the defendant No.1 in his written statement is mysteriously vague. The defendant Nos.2 and 3 have taken up a common stand whereby it is pleaded that the defendant No.2 sold rights in the suit property to the defendant No.3 under the documentation dated 2.4.1997, and which documentation was executed inasmuch as defendant No.2 purchased rights in the suit property vide the documentation executed by the defendant No.1 in favour of the defendant No.2 on 30.12.1996.

5. The impugned judgment dismisses the suit as lacking in cause of action by making the following observations:-

“Perusal of the plaint, however, shows that plaintiff was alleged dispossessed from the suit premises by defendant in Feb 97 as per cause of action clause. As per certified copy of the plaint filed by husband of the plaintiff G.D. Joshi, the petitioner i.e. husband of G.D. Joshi was dispossessed by force by the accused person Sukhdev Singh and Dalip Singh in the Month of January 25.02.92. In this connection reference is made to para-9 of the plaint wherein the plaintiff averred that defendant no.1 sold the suit property to defendant no.2 on 30.12.96 by sale transaction which sale transaction and delivery of possession is absolutely illegal and not binding on the plaintiff as according to him the same is void in law.

There is substance in the submissions by Ld counsel for defendant no.3 that nowhere the plaintiff referred to the criminal complaint under Section 341/391/448/34 IPC of which certified copy is placed by him on record alongwith statement of defendant

no.2 and also there is no averment in the plaint that plaintiff ever came into possession of the suit premises after being dispossessed from the same in the year 1992 and till it was sold by defendant no.1 to defendant no.2. There is substance in the submissions by Ld. Counsel for the defendant that cause of action of the plaintiff as per plaint on record is based on the plea that same arose in February, 1997 when the defendant no.1 forcibly dispossessed the plaintiff from the property in question which still continuous whereas in the same plaint in para-9b the plaintiff pleaded that defendant no.2 sold the property to defendant no.3 on 02.04.97 and defendant no.2 has no right, title or interest in the suit property and as such the transaction and delivery of possession, if any is absolutely illegal and without justification and not binding on the plaintiff.

Here the plaintiff is not able to show any cause of action to file the present suit as there are no pleadings that after delivery of possession of the suit property by defendant no.1 to defendant no.2 on 30.12.96, the plaintiff ever came into possession or continued to be in possession of the suit property as on 02.04.97 as admittedly on 02.04.97 possession of the suit property was handed over to the defendant no.3 by defendant no.2. As such there was no cause of action in favour of the plaintiff and against the defendant so as to file the case with the plea that defendant no.1 forcibly dispossess the plaintiff from the suit property in the month of February, 1997. Accordingly I hold that plaintiff filed the suit without any cause of action in his favour and against the defendants and based the suit on cause of action by suppressing material facts. Therefore, the suit plaint of the plaintiff is need to be rejected as filed without any cause of action under Order 7 Rule 11 CPC considering the observations of the Apex Court in case of **T. Arvindandam Vs. T.V. Satyapal and Another reported in AIR 1977 SC Page 2421** as referred to by Their Lordships in case of **Madan Lal Vaid Vs. Nand Kumar Walia & Another-2002 1 AD (Delhi) 682.**

“The answer to this question is provided by a decision of the Supreme Court in the case of T. Arviandandam Vs. T.V. Satyapal and another reported in AIR 1977 SC Page 2421, Hon’ble Supreme Court observed that if clever drafting has created illusion of a cause of action the evil should be nipped in the bud by examining the party searchingly under

order 10 CPC. It was held that such bogus litigation should be struck down at the earliest. As already noticed, the plaintiff concealed all the material facts in the original plaint and also in the amended plaint. He filed suit as the original owner of the property which has been found to be untrue from his own admission contained in the reply referred to above. If true facts were pleaded he would not have been entitled to maintain the suit for possession nor he could maintain the suit for declaration that the sale deed dated 0th June 1995 executed by defendant no.1 and 2 in favour of the defendant no.3 in respect of one half portion of the property no.IX/6075, Kashyap Marg, New Police Station, Gandhi Nagar, Delhi is illegal because at the time of execution of the said sale deed, the power of attorney executed by the plaintiff in favour of defendant no.1 and 2 was admitted in force. The said power of attorney was cancelled subsequently vide cancellation deed dated 26th June, 1995. The true facts which are admitted in his own reply indicate that he had no cause of action to file the suit. Material facts were suppressed from the Court only make out a sham, flimsy cause of action. Therefore, on the authority of the judgment of the Supreme Court in case of T. Arvandandam (Supra), I think the suit is liable to be dismissed not under Order 7 Rule 11 CPC, but for want of cause of action.”

The suit of the plaintiff is accordingly dismissed as without any cause of action. No orders as to the costs. File be consigned to the Record Room.”

6. A reading of the aforesaid paras shows that the trial Court has held that since the husband of the plaintiff in a criminal case mentioned that possession of the suit property was lost in the year 1992 and therefore there does not arise the issue of losing possession once again in the year 1997. Trial Court also holds that there is no plea with

regard to continuation of possession from the years 1992 to 1997 and therefore there does not arise an issue of appellant/plaintiff being dispossessed in the year 1997. It is in view of these facts that the trial Court has held that the appellant/plaintiff has not been able to show arising of cause of action to file the suit. Trial Court has effectively held that a plaint which contains false facts must not be entertained and must be dismissed under Order 7 Rule 11 CPC in terms of the judgment of the Supreme Court in the case of *T. Arvindandam Vs. T.V. Satyapal and Anr. AIR 1977 SC 2421*.

7. In my opinion, the trial Court has fallen into a clear cut error in deciding the disputed questions of fact at the stage of pleadings. A reading of the impugned judgment shows that the trial Court has disbelieved the case as set out by the appellant/plaintiff in the plaint and held that since the appellant/plaintiff is not stating the correct facts the suit should be dismissed. Surely, whether or not it is the plaintiff who has stated incorrect/correct facts or the defendants are stating incorrect/correct facts, will and can only be known after evidences are led by both the parties, witnesses of both the parties are cross-examined by the other side and the case is decided at the stage of final arguments. Of course, if one party to a legal proceeding has made an inconsistent statement in the suit,

as compared with an earlier statement in a judicial proceeding, then the necessary consequences in law will follow, however, of course subject to complying with the requirements of Section 145 of the Evidence Act, 1872, because as per this section it will be necessary to put the statement to the witness so as to contradict him on the ground that a false statement has been made. However, merely because there is an issue of inconsistent stand of the appellant/plaintiff, cannot mean that the suit itself has to be dismissed at the threshold. The doctrine of *falsus in uno falsus in omnibus* has no application in India inasmuch as each party to a litigation always states some sort of convenient facts, even amounting to a false statement to suit his own case, however, merely because there is found a certain falsehood in a case of a person, that in itself cannot be a ground to dismiss the suit at the initial stage though there are issues pertaining to valuable rights in an immovable property to be decided.

8. A reading of the plaint of the plaintiff in the trial Court shows that whereas the appellant/plaintiff claims rights in the suit property by means of documentation dated 4.1.1991 and illegality/invalidity of the subsequent documents executed by the defendant No.1 in favour of the defendant No.2 dated 30.12.1996 and also the consequent documentation dated 2.4.1997, the defendant Nos.2 and 3

on the other hand have pleaded validity of the documentation dated 30.12.1996 executed by the defendant No.1 in favour of the defendant No.2 and the subsequent documentation dated 2.4.1997 executed by the defendant No.2 in favour of defendant No.3. Whether the documentation dated 4.1.1991 is valid or whether the subsequent documentations, dated 30.12.1996/2.4.1997 are valid will be a factual issue in the suit and which will be decided at the stage of final arguments after trial in the case. At the stage of pleadings, however, it is not permissible in law to hold that one set of documents is correct and the other set of documents is wrong without allowing the plaintiff to prove his case during trial. In cases such as the present whether or not there is cause of action in favour of the plaintiff would mean that whether or not plaintiff will be entitled after trial to the reliefs as claimed in the plaint on the basis of averments made in the plaint. For the purpose of deciding an application under Order 7 Rule 11 CPC, the law is that for the plaint to be lacking in cause of action, only the averments in the plaint have to be seen without any reference to the written statement or other documents. The contents of the plaint, when an application under Order 7 Rule 11 CPC is decided, have to be taken as correct and final. It is not permissible while deciding an application under Order 7 Rule 11 CPC to hold that the plaint contains

false facts and therefore the suit is liable to be dismissed as lacking in cause of action.

9. In view of the above, the appeal is allowed. Impugned judgment dated 18.11.2005 dismissing the suit under Order 7 Rule 11 CPC is set aside. Trial Court will now decide the suit in accordance with law. It is clarified that nothing contained in today's judgment is a reflection on merits of the case for or against any of the parties to the suit or the present proceedings and the observations which are made in the present judgment have only been made for the purpose of deciding the present appeal against the impugned order dismissing the suit under Order 7 Rule 11 CPC as lacking in cause of action.

10. Parties to appear before the District & Sessions Judge, Delhi on 31st July, 2012, and on which date the District & Sessions Judge will mark the suit for disposal to a competent Court in accordance with law. Trial Court record be sent back so as to be available to the District & Sessions Judge, Delhi on the date fixed.

VALMIKI J. MEHTA, J

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