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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 111/2014 & C.M. No.1967/2014
NEELAM KHURANA

..... Petitioner
Through Mr.Kanwal Chaudhary, Advocate.

versus

JAGMOHAN NAYYAR (NOW DECEASED) THR HIS LRS
..... Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **27.01.2016**

Order impugned before this Court is the order dated 26.11.2013 vide which the application filed by the petitioner seeking dismissal of the plaint under Order VII Rule 11 of the Code of Civil Procedure had been declined.

The present suit has been filed by the plaintiff seeking declaration and permanent injunction. His version is that he is the legal owner of 1/4th share in the property bearing No.J-6/50, measuring 160 sq. yards situated at Ground floor, Rajouri Garden, New Delhi. His three sisters are the other co-owners in the suit property. Defendant no.1 had entered into an agreement to purchase this property on 28.6.2008 with the plaintiff and his other siblings. The sale consideration was fixed at Rs.90,00,000/- on which the share of the plaintiff was Rs.22.50,000/-. The sale deed was to be executed on a particular date but because of some inter se dispute the date of

the execution of the sale deed could not be finalized. It was finally executed on 21.02.2009 wherein the sale consideration was shown as Rs.6,50,000/-. The defendant no.1 assured that remaining amount of Rs.16,00,000/- will be paid to the plaintiff at the time of handing over the possession of the suit property. The plaintiff had several times requested the defendant to pay the balance sum of Rs.16,00,000/- out of the share of plaintiff which was Rs.22,50,000/-. The plaintiff has not received this amount till date. Defendant has misled the plaintiff by misrepresenting facts and making false statements. The transaction dated 21.02.2009 is liable to be set aside and the prayer to the said effect has been made in the plaint.

Written statement was filed by the defendant. In the course of the proceedings, an application under Order VII Rule 11 of the Code was also came to be filed. It was stated that the transaction dated 21.02.2009 has been admitted and since the plaintiff admitted that he had executed the sale deed in favour of the defendant no.1, the present plaint is liable to be rejected as it discloses no cause of action.

The impugned order had noted the factual matrix in the correct perspective. It had correctly noted that it is only the averments made in the plaint which have to be addressed at the time of deciding the application under Order VII Rule 11 CPC. The defence set up by the defendant could not be gone into. The averments made in the plaint are that transaction dated 21.02.2009 is liable to be set aside as the parties had agreed that out of Rs.22,50,000/- which was the 1/4th share of the plaintiff as mentioned in the agreement to sell defendant no.1 had agreed to pay balance sum of Rs.16,00,000/- (share of the

plaintiff) at the time of handing over the possession of the property which was the reason why the sale deed had been executed on 21.02.2009; this sale deed was executed on a misrepresentation of fact made by defendant no.1 as till date the balance amount has not been paid. Noting the above factual matrix it cannot be said that the plaint is without any cause of action. Impugned order suffers from no infirmity. Petition is without any merit. It is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 27, 2016

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