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

% *Date of Decision: 12.07.2016*

+ CM(M) 653/2016

GURCHARAN SINGH		Petitioner
Through	Mr. M.L.Mahajan and Mr. Gaurav	
	Mahajan, Advocates.	
	versus	
J S MEHTA		Respondent
Through	None.	

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J. (Oral)

CM No. 24144/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 653/2016 and CM no. 24145/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 02.04.2016 by which the application filed by the petitioner for rejection of the plaint under Order VII Rule 11 CPC was dismissed.
2. The respondent has filed the present suit for possession, recovery of future mesne profits/damages and for permanent injunction regarding property No. 32, Block 3, Old Rajinder Nagar, Delhi.
3. Learned counsel appearing for the petitioner submits that the impugned order has erroneously dismissed the application of the petitioner inasmuch as there is nothing on record whatsoever to show that the

respondent is the owner of the suit property and that a frivolous suit has been filed against the petitioner. He further submits that the petitioner is a tenant of one Smt.Kanta Mehta and that in any case, the petitioner has nothing to do with the respondent. He also relies upon the observations of the Court of Sh. Satish Kumar Arora, ARC passed in a petition filed by the respondent/plaintiff under Section 14 (1) (a) dated 07.06.2013 to contend that the respondent does not have any title to the suit property. He has further submitted that a reading of the compromise and the application under Order 23 Rule 3 CPC placed on record and relied upon by the respondent would show that it does not confer a title on the respondent. Hence, he submits that the present plaint is utterly frivolous and has to be dismissed.

4. A perusal of the plaint shows that the following averments have been made in the plaint:-

“1. That the plaintiff is an absolute and lawful owner of the property bearing No. 32, Block-3, Old Rajinder Nagar, Delhi by virtue of a Will and vide Compromise entered into between the plaintiff and one late Mrs. Kanta Mehta and her Legal heirs u/O 23 Rule 3 of CPC, in Suit No. 80/97, titled as Shri J.S. Mehta vs. Smt. Kanta Mehta and others in the court of Sh.Y.S. Zonwal, ADJ, Delhi (The then was). That the copy of which is annexed herewith as Annexure-A.

2. That the defendant No.4 is the wife of Late Sh. Shiv Ram Bajaj and remaining defendants are the legal heirs of Late Sh. Shiv Ram Bajaj, who was a tenant in respect of the shop No. 1 in the property bearing No. 32, Block-3, Old Rajinder Nagar, Delhi.

3. That the Husband of the defendant No.4 and the father of the remaining defendants is Late Shiv Ram Bajaj in his life time, and after him his son is the defendant No.1 has malafidely and dishonestly, in collusion and convince, earlier with Late Mrs.

Kanta Mehta and now her legal heirs is denying the fact that, the plaintiff has become the absolute and lawful owner of the property bearing No.32, Block -3 Old Rajinder Nagar, Delhi by virtue of a Will and vide compromise entered into between the plaintiff and one late Mrs. Kanta Mehta and her Legal heirs, u/O 23 Rule 3 of CPC, in Suit No. 80/97, titled as Shri J.S.Mehta vs. Smt. Kanta Mehta and others in the court of Sh. Y.S. Zonwal, ADJ, Delhi (the then was).”

5. The settled legal position is that under Order VII Rule 11 CPC, the Court has jurisdiction to reject the plaint where it does not disclose any cause of action or where the relief claimed is under-valued and the valuation is not corrected within a time fixed by the Court or that the suit appears from the statement in the plaint to be barred by any law. For the purpose of rejection of the plaint, the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action. So long as the plaint discloses some cause of action, which requires determination, the mere fact that the plaintiff has a weak case and may not succeed would not be a ground for rejection of the plaint. In the above context, reference may be had to the judgment of the Hon’ble Supreme Court in the case of ***Mayar (H.K.) Ltd & Ors v. Owners & Parties, Vessel M.V. Fortune Express & Ors, AIR 2006 SC 1828***. In para 11 the Hon’ble Supreme Court has held as follows:

“It is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a

bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

6. Similar are the observations of the Hon’ble Supreme Court in the case of ***Vigneswara Coop. Housing Society Ltd. V. K. Balachandramouli & Ors, (2005) 13 SCC 506.***

7. Moreover while considering an application under Order 7 Rule 11 CPC, the court can only look at the averments in the plaint and the accompanying documents. In ***Tilak Raj Bhagat vs. Ranjit Kaur, MANU/DE/3345/2012*** this court held as follows:-

“6. It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff.”

8. To the same effect are the judgements of the Division Bench of this Court in the case of ***Indian City Properties Ltd. Vs. Vimla Singh 198(2013) DLT 432*** and in the case of ***Inspiration Clothes & U vs. Collby International Ltd., 88(2000) DLT 769.***

9. Reference may also be had to a judgment of the Supreme Court in the case of ***Hardesh Ores Pvt. Ltd v. M/s Hede and Company 2007 (7) SCALE***

348, noted as follows:

“The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that “law within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action 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.”

10. Hence for the purpose of considering an application under Order 7 Rule 11 CPC only the averments made in the plaint have to be taken presuming them to be correct on the face of it along with the documents filed in support of the plaint.

11. I am of the opinion that none of the above mentioned requirements for rejection of the plaint are met with in this case. A plain and meaningful reading of the plaint along with the accompanying documents show that the respondent has claimed lawful ownership of the property in question by virtue of a will and a compromise entered into between the plaintiff and one late Shri Kanta Mehta and her legal heirs. Hence, it cannot be said that the plaint does not show any cause of action.

12. The reliance of the learned counsel for the petitioner on the interpretation of the documents in question which are said to be title documents of the respondent, namely, the will and the compromise would not be permissible, at this stage. The defence of the petitioner who is defendant in the suit cannot be gone into while adjudicating an application under Order 7 Rule 11 CPC. It would be for the respondent/plaintiff to prove

his title in the course of evidence.

13. Accordingly, I see no infirmity in the impugned order. The present petition is dismissed.

JAYANT NATH, J

JULY 12, 2016

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