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

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Date of decision: 27.01.2017

+ C.R.P. 21/2017

SUNIL KUMAR

..... Petitioner

Through

Mr.Lal Singh Thakur, Advocate

versus

SURENDER KUMAR & ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.3360/2017 (exemption)

Exemption allowed, subject to all just exceptions.

C.R.P. 21/2017 & CM No.3361/2017 (stay)

1. By the present Revision Petition under section 115 of the CPC the petitioner seeks to impugn the order dated 6.12.2016 by which his application under Order VII Rule 11 CPC was dismissed. The respondents have filed the suit for partition, declaration and permanent injunction. The plaint encompasses different properties/assets. A preliminary decree of partition is sought in respect of property No.FA-368, Mansarovar Garden, New Delhi; a preliminary decree for partition of the shop bearing No.2987 Raj Guru Road, Chunna Mandi, Paharganj, Delhi and rendition of account regarding business and assets of the business of M/s.Plastic House (India). The case of the respondent is that the property at Mansarovar Garden was purchased vide a registered Sale-Deed by Shri Wazir Chand the grandfather of the parties. He died intestate on 17.5.1971 leaving behind the aforesaid

property at Mansarovar Garden and the Proprietorship business by the name of M/s.Plastic House (India). The father of the parties, namely, Shri Baldev Singh was also impleaded as defendant No.1 in the suit. The suit was instituted in 2006 whereas Shri Baldev Singh died in 2008. The case of the respondent is that in terms of section 8 of the Hindu Succession Act the said respondents do not inherit any right on the death of Shri Wazir Chand.

2. However, the contention is misplaced. The present application is filed in 2012 i.e. six years after institution of the present suit and four years after the death of Shri Baldev Singh. The stand of the petitioner is that Late Shri Baldev Singh, namely, the father of the parties, in his lifetime executed a registered gift deed regarding the property at Mansarovar Garden in favour of the petitioner. Similarly, the shop in question was also sold to the petitioners by Late Shri Baldev Singh. Regarding the business of Plastic House (India) it is urged that the same was also dissolved long back. Hence, it is claimed that the said respondents have no right to the property in question and hence the application under Order VII Rule 11 CPC

3. The trial court by the impugned order noted that there are no grounds for rejection of the plaint and dismissed the application.

4. Under Order VII Rule 11 CPC while considering as to whether the plaint discloses a cause of action or is barred by any provisions of law, only the averments made in the plaint are to be taken into account. The defence of the defendants as contained in the written statement is not relevant for the purpose of adjudication of an application under Order VII Rule 11 CPC.

5. In the above context, reference may be had to the judgment of the 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 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.”

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.***

6. .Reference may also be had to the judgement of this court in the case of ***Tilak Raj Bhagat vs. Ranjit Kaur, 159 (2009) DLT 470*** wherein it was 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.”

7. 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.

8. A perusal of the plaint here shows that there is no reference to any Sale-Deed or Gift-Deed allegedly executed by Late Shri Baldev Singh in favour of the petitioners as is sought to be claimed. What the petitioner wants is that the court should go into the defence of the petitioner to adjudicate the rights of the parties. It is manifest that the arguments which are being raised are actually on the merits of the case and cannot be raised at the stage of arguing an application under Order VII Rule 11 CPC. There are no reasons to interfere in the impugned order.

9. Present Revision Petition is dismissed. All pending applications, if any, also stand dismissed.

JAYANT NATH, J

JANUARY 27, 2017

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