

\$~65

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

+ CM(M) 586/2017

JAI SINGH

..... Petitioner

Through: Mr.Virendra Singh, Advocate.

versus

SUMITRA DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

25.05.2017

CM No.20211/2017

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

CM(M) No.586/2017

1. The petitioner, who is defendant in Civil Suit No.642/2016, has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India assailing the order dated 21st March, 2017 to the extent the application moved by the petitioner/defendant under Order VII Rule 11 CPC has been dismissed.
2. By common order dated 21.3.2017, learned Trial Court has disposed of two applications filed by the petitioner/defendant. The first application moved under Order VIII Rule 1(3) of Code of Civil Procedure whereby the petitioner/defendant sought permission to file the documents i.e. an affidavit and an agreement for sale on record, has been allowed by learned Trial Court, as prayed. The second application moved by the petitioner/defendant Under Order VII Rule 11 CPC has been dismissed by the learned Trial Court.

3. The petitioner is aggrieved by dismissal of his application under Order VII Rule 11 CPC for rejection of the plaint.

4. The learned Trial Court has dismissed the application under Order VII Rule 11 CPC observing as under:-

“Both the parties have based their claims on certain documents allegedly executed in their favour. There are triable and contentious issues involved which could only be resolved by way of evidence. Present case is at the stage of defence evidence and present application has been filed at such a belated stage without any rhyme and reason. Application seems to be frivolous. Hence, same is dismissed with cost of Rs.1000/- to be paid to the plaintiff.”

5. Learned counsel for the petitioner has submitted that learned Trial Court could not have dismissed the application on the ground that it has been filed at a belated stage in view of the decision of the Supreme Court in ITC Limited Vs. Debts Recovery Appellate Tribunal and others AIR 1986 SC 1253.

6. A bare perusal of the impugned order shows that learned Trial Court has also noted that triable and contentious issues are involved which can only be resolved by way of evidence.

7. It is also relevant to mention here that the Civil Suit No.642/2016 has been filed by Smt.Sumitra Devi, who is wife of brother of the petitioner/defendant (*bhabhi*). The relief for possession/damages has been claimed on the ground that the petitioner/defendant was a licensee in respect of the suit property.

8. In the case Seelam Bhai & Ors. vs. State of Maharashtra & Ors. AIR 2003 SC 759, the Apex Court has observed as under:-

‘A perusal of Order VII Rule 11 C.P.C. makes it clear that the
CM(M) 586/2017

relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any state of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.'

9. The learned Trial Court while deciding the application filed by the petitioner/defendant seeking rejection of the plaint on the ground that he is owner of the suit property and placed his 'title documents' on record at a belated stage, could not have rejected the plaint as only the averments made in the plaint were required to be considered by the Court and not the defence taken in the written statement.

10. Civil Suit No.642/2016 has been filed by the respondent/plaintiff specifically pleading that she is owner in respect of the suit property and title has been claimed on the basis of sale deed. The possession of the petitioner/defendant has been claimed by the plaintiff/respondent to be that of a licensee who was permitted to live in the suit property on the death of his wife and that his licence has been terminated.

11. The plea/defence of the petitioner/defendant to be in possession of the suit property as owner is a subject matter of trial and such plea can be

proved only after an opportunity is given to the parties to lead evidence. Plaintiff could not have been rejected on the basis of defence taken in the written statement.

12. The impugned order does not suffer from any illegality or infirmity.

13. The petition is dismissed.

CM No.20210/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 25, 2017/‘st’