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

% *Date of Decision: 04.01.2017*

+ C.R.P. 1/2017

RAM PRAKASH TRIPATHI	 Petitioner
Through	Ms.Prabha Sharma, Advocate
versus	
ROHIT KUMAR	 Respondent
Through	

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition under Section 115 of the CPC the petitioner seeks to challenge the order dated 3.10.2016 by which an application filed by the petitioner under Order 7 Rule 11 CPC was dismissed.
2. The petitioner is the father of the respondent. The respondent has filed a suit for permanent and mandatory injunction against the petitioner in respect of shop at Tughlakabad Extension, New Delhi being No.RZ-328/19-20 where it is stated that the respondent is running a shop under the name and style of TIP TOP COSMETICS. The case of the respondent in the plaint is that the property is owned by his grandfather i.e. the father of the petitioner and that on 29.8.2009, the petitioner over the lock of the respondent has put another lock. The plaint further states that the petitioner is not the owner of the property and it belongs to his grandfather and the act of the petitioner has caused undue harassment.
3. The trial court dismissed the application holding that the suit is not on

the basis of title but on the basis of prior possession of the property and that opportunity has to be granted to the respondent to lead evidence to prove his possession. Hence, the application was dismissed.

4. Learned counsel appearing for the petitioner has relied upon the judgment of the Supreme Court in the case of *Maria Margarida Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (Dead) Through LRs, (2012) 5 SCC 370* to contend that the plaint fails to make the necessary essential averments regarding possession as laid down by the Supreme Court in the aforesaid judgment.

5. Order 7 Rule 11 CPC reads as follows:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.”

6. 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, where the relief claimed is under-valued and the valuation is

not corrected within a time fixed by the Court and 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. 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 presuming them to be correct. The defence of the defendant is not material for adjudication of the application. 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.

7. 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.”

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. In the present case a reading of the plaint shows that the contention of the respondent/plaintiff is that he is in possession of the shop, the grand father is the owner of the shop and the petitioner has wrongly put a lock over the lock of the respondent. He states that he has been running the shop since last several years. It is not possible to look at the defence of the petitioner. It is not clear that the plaint discloses a cause of action. The petitioner claims to be in settled possession as per the plaint and hence cannot be dispossessed as per law.

9. Reliance of the petitioner on the judgment of the Supreme Court in ***Maria Margarida Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (Dead) Through LRs (supra)*** is misplaced. No doubt, in that case the Supreme Court had culled out the necessary details which have to be

incorporated in the plaint to show as to how the parties have entered into possession. However, that judgment was not dealing with an application under Order 7 Rule 11 CPC. I may point out that implicit in the pleadings of the respondent is that he has been in possession for last several years. It is implicit that he claims to be a licensee of his grandfather. Whether the averment is correct or not cannot be adjudicated upon in an application under Order 7 Rule 11 CPC. There is no merit in the petition. Same is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JANUARY 04, 2017

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