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

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Judgment delivered on: 19.11.2019

+ C.R.P. 262/2019 & CM APPL. NO. 49784-85/2019

PARVESH KUMAR & ORS

..... Petitioners

versus

ARUN KUMAR & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Neha Kapoor and Mr. Mohit, Advocates

For the Respondent: Ms. Manisha Agrawal Narain, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 14.10.2019 whereby the application of the petitioner under Order VII Rule 11 CPC seeking rejection of the plaint has been dismissed.

2. Subject suit was filed by the respondent no. 1 seeking permanent injunction against the petitioners and respondent no. 2 to 6 thereby restraining them from raising illegal and unauthorized construction over and above the property bearing No. 310-A, Chuna Bhatti, Ram Sukkha Camp, Mathura Road, Badarpur, New Delhi, more particularly shown in red colour in the site plan annexed to the plaint.

3. The sole ground on which the application under Order VII Rule 11

CPC was filed and as submitted by the learned counsel for the petitioner is that there is a dispute as to whether the area on which the construction is being carried on forms part of property bearing No. 310 or property No. 310-A, Chuna Bhatti, Ram Sukkha Camp, Mathura Road, Badarpur, New Delhi.

4. Learned counsel submits that as respondent no. 1 has stated that the said portion falls in property bearing No. 310-A and case of the petitioner is that it falls in property bearing No. 310, it was incumbent upon respondent no. 1 to have sought a declaration prior to seeking relief of injunction and in the absence of declaration being sought, the Suit is not maintainable in the present form.

5. The case of respondent no. 1 is that illegal and unauthorized construction, without sanction of building plan, is being carried out on the property by the petitioner.

6. Further case of respondent no. 1, as borne out from the plaint, is that he is residing in an area abutting the area where the construction is going on.

7. Paragraph 15 of the plaint reads as under:-

“15. That the cause of action for filing the present suit arose in favour of plaintiff against the defendants on 05.12.2017 when the defendant no.2 to 12 started to dig with the help of labourers and started to raise illegal and unauthorized construction and the cause of action further arose on 08.12.2017 when the plaintiff visited at the office of the Execution Engineer and Police station of the area concerned and the cause of action is still continue on the date

of filing of the suit as the threat of the defendant no. 2 to 12 is till persisting as the illegal construction is going on.”

8. As per the Plaint the cause of action has accrued because illegal and unauthorized construction is being carried out in the property and complaints were made to the Corporation as also the police but no action was taken by the authorities and illegal/unauthorized construction continues.

9. The questions as to whether the disputed portion falls in property bearing no. 310 or property bearing No. 310-A or whether the said property is owned by the Petitioner or the father of Respondent No. 1 is not germane for determining the real question in controversy in the Suit i.e. whether illegal and unauthorized construction is being carried out in the property?

10. Trial court has rightly held that even if the portion does not fall in property bearing no. 310-A as claimed by the respondent no. 1, the Suit would still be maintainable because even a neighbour can object to unauthorized construction being carried out in the neighbouring property.

11. It is not in dispute that the portion, in which respondent no. 1 is residing, abuts the area in which construction is being carried out. On bare reading of the plaint, it is clear that the plaint does disclose a cause of action.

12. Reliance placed by learned counsel for the petitioner on the judgment of the Supreme Court in ‘*T. Arivandandam Vs. T.V. Satyapal & Anr.*’ 1977 4 SCC 467, to contend plaint has to be read in a meaningful manner so as to ascertain whether the cause of action is to disclose or not is

misplaced.

13. As noticed above, the plaint does disclose a cause of action and the real question in controversy is with regard to illegal and unauthorized construction and not with regard to title of the land on which construction is being carried out.

14. Further reliance placed by learned counsel for the petitioner on the judgment of the Supreme Court in '*Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. & Ors.*', (2008) 4 SCC 594, to contend that where there is a cloud on the title then a suit for prohibitory injunction simpliciter, relating to immoveable property, would not be maintainable unless the plaintiff seeks declaration and possession, is again misplaced. The real controversy in the present suit is with regard to illegal/unauthorized construction and not to the title of the said land.

15. In view of the above, I find no infirmity in the view taken by the trial court in rejecting the application filed by the Petitioner under Order VII Rule 11 of the CPC. There is no merit in the petition.

16. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

NOVEMBER 19, 2019

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