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

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Judgment delivered on: 07.02.2020

+ C.R.P. 261/2019

NEHA DUTTA

..... Petitioner

versus

CAPITOL ART HOUSE (P) LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Kuldeep Kumar, Advocate

For the Respondent:

Ms. Leena Tuteja and Ms. Diksha Bhatia,
Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 5116/2020 (Exemption)

Allowed, subject to all just exceptions.

CM APPL. 5115/2020 (stay)

No ground is made out to stay the proceedings of the trial court.

The application is dismissed.

C.R.P. 261/2019

1. With the consent of the parties, the petition is taken up for hearing today. Next date 30.04.2020 is hereby cancelled.

2. Petitioner impugns order dated 20.08.2019 whereby the

application of the petitioner under Order VII Rule 11 CPC has been dismissed.

3. Respondent has filed the subject Suit for cancellation of registered relinquishment deed dated 26.08.2015 as also for permanent injunction thereby restraining petitioner from transferring, selling, alienating and and/or creating any third-party rights in respect of Shop No. 4/6 in building bearing Municipal No. 4/1-14 (A-1/4) Kalka Das Marg, Eleven Style Mile, Ward 1, Mehrauli, New Delhi of Village Mehrauli, Tehsil Hauz Khas, New Delhi known as 'The Casa Hazel/Vidge Centre', Opposite Qutub Minar, Mehrauli.

4. The contention of the respondent in the Suit, *inter-alia*, is that respondent is the recorded owner of the subject property having purchased the same by way of registered sale deed dated 13.06.2012. It is contended that the said property was originally under the tenancy and in possession of one Mangal Swaroop and at the time of purchase of the same, said property was in illegal possession of one Bharat Bhushan Dutta, husband of the petitioner who continued to occupy the same through earlier tenant holding over on low monthly payment without any registered agreement.

5. It is contended that despite the fact that petitioner has no ownership in the property, subject relinquishment deed has been executed by the mother and sister of the petitioner in her favour stating therein that they are owners and in possession of the subject

shop. It is contended that since the respondent is the recorded owner of the property and the executants of the relinquishment deeds are not the owners thereof, subject Suit for cancellation of the registered relinquishment deed has been filed.

6. Subject application under Order VII Rule 11 CPC was filed by the petitioner contending that the plaint fails to disclose any cause of action. It is contended by learned counsel for the petitioner that there are several other proceedings, inter-se, the parties where petitioner has disputed the registration of the sale deed in favour of the respondents.

7. Learned counsel submits that since there is a dispute raised by the petitioner qua the title of the respondent, subject plaint is liable to be rejected.

8. I am unable to accept the contention of learned counsel for the petitioner, in as much as, for consideration of an application under Order VII Rule 11 CPC, the averments in the plaint have to be read with a demur and the defence of the defendant in the Suit is not to be considered at that stage.

9. Since the contention of the respondent is that respondent is the recorded owner of the subject property and the mother and sister of petitioner are not the owners and they have registered the relinquishment deed stating that they are the owners, it gives a cause of action to the respondent to seek cancellation of the relinquishment deed.

10. On perusal of the averments of the plaint shows that the plaint does disclose a cause of action. Merely because there are other litigations pending inter se the parties in which the petitioner has challenged the registration of the sale deed in favour of the respondent, is no ground to reject the plaint under order 7 rule 11 on the ground that it does not disclose a cause of action, when the facts pleaded do show a cause of action.

11. Accordingly, I find no infirmity in the view taken by the trial court that the plaint discloses a cause of action and cannot be rejected under Order VII Rule 11 CPC.

12. I find no merit in the petition. The petition is accordingly dismissed.

13. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party.

14. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 07, 2020

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