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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 20th October, 2020
+ **C.R.P. 68/2020 & CM APPLs. 26639-40/2020**

M/S CHELMSFORD COUNTRY CLUB Petitioner

Through: Mr. R.K. Sharma, Advocate (M-
9313340162)

versus

MRS. AJIT KAUR Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.

2. The present petition has been filed challenging the impugned order dated 24th September, 2020, by which an application filed by the Defendant/Petitioner (*hereinafter*, “*Defendant*”), under Order VII Rule 11 of CPC, has been dismissed by the Trial Court. The objections raised by the Defendant, in the said application, under Order VII Rule 11 of CPC before the trial court, are as under:

- i) that the suit is barred by limitation;
- ii) that proper Court fee has not been paid;
- iii) that in terms of Clause 13 of the perpetual lease deed entered into between the Defendant-Club and the father-in-law of the Plaintiff/Respondent (*hereinafter*, “*Plaintiff*”), at the time of the demise of the original allottee or member of the club, the suit property shall be registered in the name of the legal heir of the original allottee, provided

that the legal heir is also member of the club;

iv) that the suit is not maintainable in view of Section 185 of the Delhi Land Reforms Act.

3. Mr. Sharma, Id. counsel, submits that the Trial Court has failed to consider all these aspects and has incorrectly rejected the application under Order VII Rule 11 of CPC.

4. A perusal of the impugned order shows that the Trial Court has considered the factual background of the case and has also considered the issues which have been raised above, including the payment of the Court fee, limitation, bar under the Delhi Land Reforms Act and also the issue of Order VII Rule 11 of CPC on merits, while dismissing the said application. The reasons given by the Trial Court are:

a) the Delhi Land Reforms Act does not bar the maintainability of the present suit in as much as the Plaintiff can seek an injunction before the Civil Court, as the original perpetual lease deed is executed in favour of the father-in-law of the Plaintiff.

b) insofar as the plea on limitation is concerned, the Trial Court has held that the cause of action had arisen when the labourers, who were sent for carrying out repairs in the property, were prevented from entering the property. Considering the date of the said incident, the trial court has held the suit to be within limitation.

c) insofar as Court fee is concerned, the same, in terms of declaration and injunction, has already been paid, according to the Trial Court.

5. The Court has perused the objections raised in the application under Order VII Rule 11 of CPC and the manner in which it has been dealt with by

the trial court in the impugned order.

6. The suit filed by the Plaintiff is for Permanent injunction and Declaration. It is the case of the Plaintiff that she enjoys perpetual lease rights to enjoy the property being Plot no.14, Chelmsford Country Club, Gadaipur, New Delhi. She wanted to carry out maintenance and renovation work in the property, but is not being allowed entry thereto. She submits that her father-in-law was the member of the defendant club which had acquired 60 acres of land from the Government for the purposes of developing the club, and allotting farm houses to its members. A perpetual lease deed dated 22nd February 1979 was executed in favour of the original owner by the Club. Thereafter the property was demarcated and mutation was done in 1995. Construction of the farm house was commenced in 1995 and was completed in 1996. The original owner was joined by his son i.e., the Plaintiff's husband in 1999-2000. The property was used for family functions including weddings. The original owner passed away in 2003 and his son started residing in the property. However, from 2010 he had moved to his residence in Greater Kailash due to ill health. He passed away in 2011. The Plaintiff, being an old widow, had not visited the suit property for a few years. All the dues of the club have been cleared. However, in June 2020 when the son of the Plaintiff visited the property to start renovation, along with the labour, he was denied entry. This led to the filing of the suit.

7. In the written statement, the case of the club is that the Plaintiff has no interest in the suit property. According to the Written Statement filed before the trial court, the Club is the true owner of the property and since the Plaintiff is not in possession, no relief of injunction can be claimed, without claiming recovery of possession. It is further stated in the written statement that a suit

for simple declaration is also not maintainable and since the husband of the Plaintiff had not got the property transferred in his name, the Plaintiff has no rights. Various other objections are also raised under the provisions of the Specific Relief Act. Along with the written statement, an application under Order 7 Rule 11 CPC is also filed taking the objections set out above. The said application has been dismissed by the Id. trial court, vide the impugned order.

8. A perusal of the pleadings shows that the suit is not one which can be rejected in an application under Order 7 Rule 11 CPC. In the written statement, the Club does not dispute that the Plaintiff's father-in-law was the original allottee under a perpetual lease deed. The Club also does not dispute that the mutation is in the name of the original owner. The Club contends that the original owner had raised unauthorised construction, and that mere mutation does not confer any legal right upon the property. Even the payment of maintenance charges by the Plaintiff, herself, is not denied, albeit it is contended that the same may have been in connivance with employees of the club.

9. The property is a valuable one which has been in the possession and occupation of the Plaintiff's family for several decades now. The issues raised by the parties require proper adjudication. In light of these facts, the objection raised as to limitation is a mixed question of fact and law. Further, on the aspect of court fee, if the court fee is deficient, the Court can always permit the payment of the same, as the same is at best a technical objection. Insofar as the nature of the perpetual lease and clause 13 in the lease is concerned, the said objection would have to be considered in the light of the fact that firstly, the Club has accepted maintenance charges from the original owner,

thereafter his son and his family claim to have lived in the suit property, and finally the Plaintiff claims to have paid the maintenance charges. Thus, the trial court is right in holding that in view of the perpetual lease deed the plaint is not liable to be rejected.

10. In view of the above, the impugned order does not deserve to be interfered with at this stage. However, the Trial Court, while framing of issues, shall frame issues in respect of the objections raised by the Defendant, herein. The Trial Court would thereafter determine as to whether these issues could be adjudicated on the basis of records, pleadings/documents or whether any oral evidence is required to be led, and then proceed in accordance with law. Needless to add that the findings in the impugned order shall not bind the Trial Court at that stage.

11. With these observations, the present petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 20, 2020

Rahul/AS