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

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Date of decision: 05.03.2021

+ C.R.P. 21/2021 and CM Appl. 6834/2021

ARCHANA MITTAL AND ANR Petitioners

Through: Mr. Rajesh Kaushik, Advocate

versus

SHIKHA MITTAL

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

Hearing has been conducted through Video Conferencing.

1. Present Civil Revision Petition has been filed under Section 115 CPC read with Section 151 CPC against the impugned order dated 19.02.2020 passed by the learned Trial Court whereby the application of the Petitioner herein filed under Order VII Rule 11 CPC has been dismissed.

2. It was averred in the application by the Petitioner herein that the plaintiff/Respondent herein had only claimed right to recover possession on the strength of alleged Power of Attorney in favour of one Shri Ajit Mittal and an alleged Will made by him. It was further averred that Power of Attorney being an extension of the agency expires on the death

of either the donee of Power of Attorney or the donor of the Power of Attorney and thus on the death of Shri Ajit Mittal, no Power of Attorney exists. Thus, the plaint deserves to be dismissed under Order VII Rule 11(d) CPC. Petitioner had also relied on the judgement of the Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana and Ors., SLP (C) 13917/2009* dated 11.10.2011 to contend that no title or ownership to an immovable property can pass on the basis of a Power of Attorney in the absence of a registered sale deed with respect to the property.

3. On the other hand, learned counsel for the plaintiff had contended that late Shri Ajit Mittal, husband of the plaintiff, had purchased the suit property through its erstwhile owner Smt. Prakashwati on 08.12.2000 vide registered GPA, Will and Receipt and Agreement to Sell and the possession was handed over to him. The GPA was irrevocable and thus subsists even after her death in terms of provisions of Section 202 of the Indian Contract Act, 1872. It was also contended by the plaintiff that the defendants therein were mere licensees in the suit property and had been allowed to stay therein by late Shri Mittal out of love and affection. They have no locus to thus challenge the title of late Shri Mittal in the suit property. Plaintiff had also averred in the reply to the application that Smt. Prakashwati expired on 02.07.2003 and in terms of the Will executed by her, the property devolved upon late Shri Mittal.

4. The learned Trial Court having heard the parties has vide the impugned order dismissed the application of the Petitioner herein finding no merits in the same, principally on the ground that for

deciding an application under Order VII Rule 11 CPC, the Court has to see the contents of the plaint and the documents filed on behalf of the plaintiff. Having perused the plaint and the documents filed by the Petitioner, the Trial Court was of the view that it was a matter of trial whether the plaintiff is entitled to decree of possession and other reliefs sought therein. Reliance was placed on the judgement of this Court in the case of **Hardip Kaur vs. Kailash and Anr., 193 (2012) DLT 168**. Relevant part of the impugned order is as under:-

“7. Perusal of the file would show that the plaintiff has filed the present suit for possession, mesne profit, damages and permanent injunction. It is mentioned in the plaint that her husband Sh. Ajit Mittal had legally purchased the suit property from Smt. Prakashwati on 08.12.2000 vide documents in the nature of GPA, Will, receipt. It is further mentioned in the plaint that her husband expired on 28.12.2017 leaving behind a Will dated 24.05.2014 duly executed by him in favour of the plaintiff and probate proceedings in respect of the said will are pending before the court of Ld. ADJ. In the reply filed on behalf of the plaintiff, it is mentioned that the erstwhile owner / allottee of the suit property has already expired on 02.07.2003 and thus, in terms of Will executed by her, the suit property devolved upon Late Sh. Ajit Mittal.

*8. The present suit has been filed for possession and no declaration of ownership has been sought in the present matter. It is also settled law that for deciding the present application under Order 7 Rule 11 CPC, the contents of the plaint and documents filed on behalf of the plaintiff are required to be seen. Keeping in view the judgment of Hon’ble High Court of Delhi titled as “**Hardip Kaur vs. Kailash & Anr.**” (*supra*), the documents on record and the averments of the plaintiff, this Court is of the view that it is matter of trial whether the plaintiff is entitled for decree of possession and other reliefs as sought by her in the plaint.”*

5. Learned counsel for the Petitioner contends before this Court that the Trial Court failed to consider that the material facts did not show that the ownership documents in the name of the plaintiff were valid documents. It is urged that the Trial Court erred in appreciating that the GPA and Will dated 08.12.2000 executed by the predecessor-in-interest of late Shri Mittal was not an authentic document which can legally confer title and ownership in terms of the law laid down by the Supreme Court in the case of *Suraj Lamp (supra)*. Learned counsel also argues that admittedly there is no Sale Deed executed by Smt. Prakashwati in favour of late Shri Mittal and there is no document on record to show that any consideration for transfer of property was paid by the latter to Smt. Prakashwati.

6. I have heard the learned counsel for the Petitioner and perused the impugned order. It is a settled law that at the stage of considering an application under Order VII Rule 11 CPC, the Court is only required to examine the plaint and the list of documents filed on behalf of the plaintiff alongwith the suit. Other pleas raised by the parties including those in the written statement are not relevant to decide the said application. In this context I may usefully allude to a few judgements as follows:-

a. The Supreme Court in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success (2004) 9 SCC 512* while dealing with the law pertaining to rejection of a plaint under Order VII Rule 11 CPC held:-

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact.

So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars.”

b. In ***Popat and Kotecha Property vs. State Bank of India Staff Association***, (2005) 7 SCC 510 it was held:-

“The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits.”

“Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in

the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

c. In ***Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366*** it was held:-

“23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

*23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.*,⁴ which reads as :*

“139 Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed”.

*23.12 In *Hardesh Ores (P.) Ltd. v. Hede & Co.*⁵ the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in*

isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

23.13 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.”

d. In ***Saleem Bhai and Ors. vs. State of Maharashtra and Ors. (2003) 1 SCC 557***, Supreme Court observed as follows:-

“9. A perusal of Order 7 Rule 11 C.P.C. makes it clear that the 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 stage 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.”

7. From the reading of the above judgments it is clear that the power conferred on a Court to bring to an end a civil action is circumscribed by the provisions of Order VII Rule 11 CPC wherein a duty is cast on the Court to determine if the plaint discloses a cause of action and for this purpose, the contents of the plaint have to be read in conjunction with the documents appended thereto. On a close scrutiny, the Court will examine if the plaint, seen as such contains assertions which are contrary to Statutory Law, a judicial *dicta* so as to reject the plaint at the threshold. As held by the Supreme Court, the test for exercising the power would be to see that if the averments in the plaint taken in entirety along with the documents filed would result in a decree, however, it is not permissible to cull out passages/sentences in isolation. The substance and not the form has to be looked into without any addition/subtraction. If the averments in the plaint *prima facie* disclose a cause of action, at that stage, the Court cannot embark upon an enquiry on the truth of the allegations.

8. The Trial Court has closely scrutinized the contents of the plaint. The suit filed by the plaintiff is for possession, *mesne* profits, damages and permanent injunction. It is asserted in the plaint that the husband of the plaintiff late Shri Mittal had purchased in the property on 08.12.2000 through GPA, Will and other related documents. Husband of the plaintiff expired on 28.12.2017 leaving behind the Will dated 25.04.2014 duly executed by him in favour of the plaintiff and the probate proceedings are still pending before the Competent Court for

adjudication. From a examination of the plaint, the Trial Court, in my view, has rightly come to a conclusion that the issues raised by the Petitioner herein in the application under Order VII Rule 11 CPC cannot lead to rejection of the plaint at the threshold as it would be a matter of trial whether the plaintiff is entitled to a decree of possession and other reliefs sought in the plaint. Even before this Court, the grounds in the present petition by bare perusal viz. a) validity of ownership documents such as GPA, Will etc., nature of the Power of Attorney (irrevocable or otherwise) are not issues which can be decided without evidence.

9. I find no infirmity in the impugned order passed by the Trial Court. Petition alongwith the application filed herewith is dismissed being devoid of merit.

JYOTI SINGH, J

MARCH 05, 2021

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