$~2(Appellate)

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

\+ CM(M) 510/2022 & CM No. 26079/2022

SATISH KUMAR ..... Petitioner
Through: Ms.Savita Aggarwal, Adv.

versus

KRISHNA & ORS. ..... Respondents
Through: Mr. V.V. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T(O R A L)

% **18.07.2022**

1. The order dated 21st February, 2022, passed by learned Additional Senior Civil Judge (the learned ASCJ) in CS SCJ 815/18 ***(Krishna v. Satish Kumar)*** decides three applications filed by the petitioner, as the defendant in the said suit. They were filed under Section 21(2), Order XIV Rule 5 and Order XIX Rule 3 of the Code of Civil Procedure, 1908 (the CPC).

The suit

2. CS CSJ 815/18 was filed by the respondents against, *inter alia*, the petitioner. The petitioner was Defendant 1 in the suit. Defendant 2 Angoori Devi expired during the pendency of the proceedings. The respondents were the plaintiffs in the suit.

3. The respondents, in the suit, claimed to have become absolute owners of a property situated at D-4/15, Plot No. 24, Khasra No. 24/6 & 24/7, Village Dabri, Delhi (the suit property) by virtue of a registered gift deed executed in their favour by Angoori Devi, the mother of the petitioner. As the petitioner was residing in the suit property, the plaint averred that, on 9th June 2016, the respondents served a registered notice on the petitioner, requiring him to vacate the suit property and pay damages and *mesne* profits. On the petitioner failing to deliver possession of the suit property despite service of notice by the respondents, the plaint averred that the respondents filed Suit 111/17 ***(Krishna Devi & Ors. v. Vinod Kumar & Ors.)***. By order dated 30th May 2018, the learned JSCC permitted the respondents to withdraw the said suit and file a fresh suit on the same cause of action. It was in these circumstances that CS SCJ 815/18 came to be filed by the respondents against the petitioner.

4. The prayer clause in the suit read thus:

> "It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased:
>
> a. Pass a decree of mandatory injunction thereby directing the defendant no.1 to remove his belongings from First Floor of property bearing no. D-4/15, admesuring about 75 sq yrds. (62.7075 sq. mtrs.) out of Khasra No.24/6 & 24/7 situated in the Village Dabri, Delhi known as Vashishth Park, New Delhi-110045, as shown in red colour in the site plan which is annexed herewith as **ANNEXURE "A"**
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> b. to pass a decree of permanent injunction in favour of the plaintiffs and against the defendant no.1 thereby restraining the defendant no.1, his agents, servants, attorneys, associates, family members, etc.

from parting with or delivering possession of the suit property to some other person except the plaintiffs.

c. to pass a decree of mesne profit/damages @ Rs. 10,000/- (Rupees Ten Thousand Only) per month during pendency of the suit and till delivery of possession of the property.

d. Cost of the suit may kindly also be awarded in favour of the plaintiffs.

e. Any other order(s) which this Hon'ble court deem fit and proper may kindly also be passed in favour of the plaintiffs and against the defendants."

5. It is not necessary to chart, exhaustively, the progress of the aforesaid suit. It is only necessary to refer to two orders which came to be passed therein, on 13th December 2018 and 16th February 2019 respectively.

Orders dated 13th December, 2018 and 16th February, 2019

6. The order dated 13th December, 2018 decided an application filed by the petitioner under Order VII Rule 11 of the CPC. It was specifically alleged, in the said application, that the suit was carefully disguised, as it effectively sought a relief of possession under the garb of mandatory injunction, without filing proper court fees. The application also sought to question the validity of the gift deed, whereunder the respondents claimed to have become owners of the suit property.

7. The following passages from the order dated 13th December

2018, merit reproduction:

> "Present application is moved on behalf of defendant no. 1 for rejection of the plaint on the ground that the suit is not properly valued for the purpose of court fees and jurisdiction. It is submitted on behalf of applicant that the plaintiff is seeking relief of possession under the garb of mandatory injunction without filing of proper court fees. It is submitted on behalf of applicant that the alleged Gift Deed is a sham document through which the plaintiff could not get any right or title over the suit property. He further stated that the present suit is liable to be rejected u/0 VII R 11 CPC.
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> *****
>
> I have considered the submissions of both the parties and perused the records. It is a settled law that at the time of disposal of application u/O VII R 11 CPC, court has to see only statements made in the plaint and defence, if any, raised on behalf of defendant can not be considered at this stage. Reading of the plaint reveals that plaintiff stated that defendant no. 2 was owner of the suit property and defendant no. 1 was his licensee and thereafter plaintiff became the owner of the suit property on the basis of Gift Deed. Thereafter, despite service of legal notice defendant no. 1 has not vacated the suit property. Hence, after termination of .license, licensor can get vacate the suit property by way of mandatory injunction. Whatsoever, the defence of the defendant, same can be considered at later stage. At present, court finds that suit of the plaintiff does not come under the purview of Order VII R 11 CPC. Therefore, application move on behalf of defendant u/O VII R 11 CPC stands dismissed and disposed off accordingly."

8. The petitioner moved an application seeking review of the aforesaid order dated 13^{th} December 2018, which was also dismissed *vide* order dated 16^{th} February 2019.

9. These orders have attained finality, as the petitioner did not choose to carry them further.

Order dated 14th May 2019

10. The petitioner further contested the maintainability of the suit, before the learned ASCJ, submitting that a suit seeking mandatory and permanent injunction simpliciter without seeking a relief of possession was not maintainable. The argument of insufficient court fees was again sought to be raised.

11. The said objection was rejected by the following order passed on 14th May, 2019:

> "CS No.815/18
> Krishna & Ors. Vs. Satish Kumar & Anr.
>
> 14.05.2019
>
> Present : Sh. V.V. Singh, Ld. Counsel for all the plaintiffs.
> Ms. Savita Aggarwal, Ld. Counsel for defendant;
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> Further arguments heard on the point of maintainability of the suit. Ld. Counsel for defendant argued that the suit filed by the plaintiffs is not maintainable in the present form as the suit is filed by plaintiffs only for mandatory & permanent injunction without seeking relief of possession. The plaintiffs wants to evade from filing of proper Court fees by way of filing the suit in present form. Therefore, suit is liable to be dismissed.
>
> On the other hand, Ld. Counsel for plaintiffs stated that plaintiffs are owners of the suit property on the basis of Gift Deed executed in their favour by its earlier owner Smt. Angoori Devi who was mother of the plaintiffs. The defendant was only a licensee of earlier owner of the suit

property who terminated the said license and thereafter, as ownership was changed and accordingly plaintiffs have also terminated the license. Plaintiffs are seeking to get vacate the suit property from defendant and therefore, there is no need to file suit for possession .and the requisite Court fee for the relief of possession. The suit is maintainable.

I have considered the submissions of both parties and perused the record. The earlier ownership of Smt. Angoori Devi upon the suit property is not in dispute between the parties. Defendant is disputing the alleged gift deed executed by Smt. Angoori Devi in favour of plaintiffs. It is admitted fact that defendant is son of Smt. Angoori Devi and is brother of plaintiffs. As mentioned by defendant in WS, he is residing in the suit property as family member of Smt. Angoori Devi being his son. Therefore, entry of the defendant in the suit property was a permissive as he is residing in the suit property with the permission of Smt. Angoori Devi. As per the plaintiffs, now they become owner of the suit property on the basis of registered gift deed. Therefore, they stepped into the shoes of Smt. Angoori Devi. Therefore, in view of the facts & circumstances, Court finds that the suit filed by the plaintiffs for mandatory & permanent injunction to get vacate the suit premises from their permission user is maintainable. The question of maintainability decided accordingly.

Put up for admission-denial of documents & framing of issues on **07.08.2019.**

(DR. JAGMINDER SINGH)
JSCC-ASCJ-cum-Guardian Judge,
Dwarka Courts : Delhi/14.05.2019"

12. This order was also never challenged and has accordingly attained finality.

Presently impugned order

13. The presently impugned order dated 21st February 2022 has been passed by the learned ASCJ on an application filed by the petitioner under Section 21(2) of the CPC, again contending that the respondents had filed a suit for possession under the garb of a suit for mandatory injunction and had, therefore, not properly valued the suit for the purposes of court fees. The learned ASCJ has noted that the argument that the suit was a suit for possession clothed in the garb of a suit for mandatory junction already stood decided by the earlier order dated 14th May 2019. Being a suit for mandatory injunction, and not a suit for possession, the learned ASCJ held that the suit was to be valued, not under Section 7(v) but under Section 7(iv)(d) of the Court Fees Act, 1870. For ready reference, Clauses (iv) and (v) of Section 7 of the Court Fees Act may be reproduced thus:

> "**7. Computation of fees payable in certain suits.**—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—
>
> (iv) In suits—
>
> **for movable property of no market-value**.—(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,
>
> **to enforce a right to share in joint family property**.—(b) to enforce the right to share in any property on the ground that it is joint family property,
>
> **for a declaratory decree and consequential relief**.—(c) to obtain a declaratory decree or order, where consequential relief is prayed,
>
> **for an injunction**.—(d) to obtain an injunction,

for easements.—(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts.—(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; In all such suits the plaintiff shall state the amount at which he values the relief sought [1] [***];

for possession of land, houses and gardens.—
(v) In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue;

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue;

and such revenue is permanently settled—

ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

> and such revenue is settled, but not permanently—
>
> five times the revenue so payable;
>
> (c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,
>
> and net profits have arisen from the land during the year next before the date of presenting the plaint—
>
> fifteen times such net profits;
>
> but where no such net profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;
>
> (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—the market-value of the land:"

14. As appropriate court fees had been paid under Section 7(iv)(d), the application under Section 21(2) of the petitioner was dismissed by the learned ASCJ.

15. The petitioner filed an application under Section 114 of the CPC, seeking a review of the aforesaid order dated 21st February 2022. The review application was dismissed by order dated 20th April 2022, on the ground that there was no error apparent on the face of the record of the order dated 21st February 2022 and that no other ground, meriting a review of the said order, had been made out.

16. Quite obviously, no exception can be taken to the decision of the learned ASCJ in dismissing either the application of the petitioner under Section 21(2) or the application filed for review of the order passed by the learned ASCJ in that regard. The petitioner is seeking multiple bites at the cherry. Initially, the issue of pecuniary jurisdiction was raised by way of an application under Order VII Rule 11, which was dismissed and carried in review unsuccessfully and allowed, thereafter, to rest there. The objection that the suit was a suit for possession clothed in the garb of a suit for mandatory injunction was also rejected by the learned ASCJ, and the matter was not carried further. The same issues had been sought to be re-agitated in the garb of the application under Section 21(2). Clearly, the learned ASCJ was, therefore, entirely justified in rejecting the said application. The petitioner did not rest there, but carried the said order in further review which also stands dismissed.

17. The challenge to the orders dated 21st February 2022 and 20th April 2022, insofar as they deal with the application of the petitioner under Section 21(2) of the CPC have, therefore, necessarily to fail.

18. The second application which the order dated 21st February 2022 decides was preferred by the petitioner under Order XIV Rule 5 CPC. By this application, the petitioner sought framing of the following additional issues:

> "(v) Whether there is any land lord / tenant relationship ever exist between the Plaintiffs and the Defendant, if so, what rate of the rent?
>
> (vi) Whether the Plaint suffers deficient Court fees?
>
> (vii) Whether this hon'ble Court has pecuniary jurisdiction to entertain and adjudicate upon the subject matter."

19. The learned ASCJ has rejected this application, observing that (i) the contention that the suit was bad on the ground of deficient court fees had already been rejected by her and (ii) no pleading, asserting any landlord-tenant relationship between the parties, had been taken by anyone including the petitioner and, therefore, there could be no question of framing of issue in that regard.

20. Ms. Savita Aggarwal, learned Counsel for the petitioner is candid in acknowledging that, in fact, the petitioner never raised any plea of existence of any landlord-tenant relationship between the petitioner and the respondents. She, however, submits that the respondents were illegally seeking to treat the petitioner as a licensee in respect of the premises.

21. No plea of the existence of any landlord-tenant relationship between the petitioner and the respondents having been taken by the petitioner at any point of time, including in the written statement filed by the petitioner in respect to the suit of the respondents, the learned ASCJ cannot be faulted in refusing to frame an issue in that regard. The rejection, by the learned ASCJ, of the application under Order XIV Rule 5 CPC too, therefore, does not call for any interference.

22. The third application decided by the learned ASCJ was preferred by the petitioner under Order XIX Rule 3 of the CPC. The plea of the petitioner therein was that paras 4 and 9 of the affidavit in evidence filed by Respondent 1 were beyond the pleadings of Respondent 1 in the suit.

23. The learned ASCJ has rejected this contention, on the ground that the pleas urged in paras 4 and 9 of the affidavit in evidence of Respondent 1 were covered by paras 3 and 8 of the plaint filed by the respondents.

24. This is clear on a comparison of paras 4 and 9 of the affidavit in evidence of Respondent 1 vis-a-vis paras 3 and 8 of the plaint thus:

> "<u>Paras 4 and 9 of affidavit of evidence of Respondent 1</u>
>
> 4. That the deponent further states that the defendant is son of Late Smt. Angoori Devi and was allowed by Smt. Angoori Devi to use/live/reside on the first floor of the property on license basis only in the presence of the deponent and the defendant is residing in the same alongwith his family.
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> *****
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> 9. That the deponent further states that despite the service of the notice dated 08.07.2015 and 09.06.2016 the defendant has not delivered the possession to the plaintiff till date.
>
> <u>Paras 3 and 8 of the plaint</u>
>
> 3. That the defendant no. 1 is son of Smt. Angoori Devi/defendant no.2 was married in the month of April 1993. After his marriage the defendant no.2 allowed the defendant no.1 to use/live/reside on the first floor of the above property on license basis only (the same is shown in the red colour in the site plan filed herewith the plaint as ANNEXURE "A")

> and since then the defendant no. 1 is residing in the same alongwith his family;
>
> ****
>
> 8. That despite the service of the notices dated 08.07.2015 and 09.06.2016, the defendant no.1 did not deliver possession to the plaintiffs till date.

25. The learned ASCJ has, therefore, correctly rejected the petitioner's contention that paras 4 and 9 of the affidavit in evidence of Respondent 1 were required to be struck off being in excess of the pleadings of the respondents.

26. Obviously, this decision, too, does not call for any interference.

27. This Court is constrained to observe that the petitioner appears to be abusing the legal process. Repeated applications are being filed time after time, raising the very same pleas which have earlier been rejected, with no justifiable reason whatsoever. It is obvious that the petitioner is seeking to delay the proceedings as far as possible and hinder a proper adjudication of the suit.

28. Ms. Savita Aggarwal, learned Counsel for the petitioner also complained about the costs that have been imposed by the learned ASCJ.

29. In view of the aforesaid facts, the learned ASCJ has, if anything, being unduly lenient in awarding costs. This Court would be inclined, in facts such as these, to enhance the costs awarded by the learned ASCJ. However, I refrain from doing so.

30. The petition is, accordingly, dismissed.

C. HARI SHANKAR, J.

JULY 18, 2022/kr