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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **C.R.P. 86/2022****KRISHNA WADEHRA & ORS.** PetitionersThrough: Mr. Anil Kher, Sr. Adv. with Ms.
Chakshu Thakral, Adv.

versus

RAM PARSAD & ORS. Respondents

Through:

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*Date of Decision: 5th July, 2022***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)****CM APPL. 29061/2022 (exemption)**

Exemption allowed subject to all just exceptions.

CM APPL. 29059/2022 (condonation of delay)

For the reasons stated in the application, the delay for one day in filing the petition is condoned.

The application stands disposed of.

C.R.P. 86/2022, CM APPL. 29060/2022 (stay)

1. The present revision petition has been filed challenging the impugned order dated 20th February, 2020, whereby the application under Order VII Rule 11 CPC has been dismissed by the learned Trial Court. Predominantly on the ground that the certified copy of sale deed dated



28th August, 1968, produced by the learned counsel for the defendant to prove his title, neither bears the signatures of vendor nor of the witnesses.

2. Learned senior counsel has submitted that the suit being filed by the respondent/plaintiff bearing No. CS 341 of 2019 against the petitioners/defendants is an abuse of the process of the Court. Learned senior counsel submits that it is an admitted case that the defendants/petitioners are in possession of the suit property bearing House No. 12, Block-D, Satyawati Nagar/Colony, New Delhi-110052.
3. Learned senior counsel has submitted that it is also an admitted case that Sh. Khushi Ram Kain, the predecessor-in-interest of the respondent/ plaintiff had purchased the suit property from Delhi State Harijan Co-operative Association Ltd. The plea of the learned senior counsel for the petitioner is that subsequently, late Khushi Ram Kain sold this property to Smt. Krishna Devi vide sale deed dated 19th November, 1968. Smt. Krishna Devi then sold this property to the petitioner (Smt. Krishna Wadhera) vide sale deed dated 21st July, 1969.
4. Learned senior counsel submits that since then, the petitioners are in possession of the suit property and have also raised substantial construction.
5. Learned senior counsel has submitted that the civil suit filed by the respondent is actually without any cause of action and is also barred by limitation. It has been submitted that as per Article 65 of the Limitation Act, 1963, the period of limitation is 12 years, whereas in



the present case the suit has been filed in the year 2019 i.e. after around 51 years of the execution of the sale deed.

6. Learned senior counsel further submitted that in the prayer B of the suit filed by the respondent / plaintiff, it has been submitted that the sale deed executed by late Sh.Khushi Ram Kain in favour of Smt. Krishna Devi be declared as null and void whereas Smt. Krishna Devi has not been made a party.
7. Learned senior counsel has further submitted that the petitioner should not be made to undergo the agony of the Trial on the basis of baseless suit being filed by the respondent/plaintiff. He further submits that the learned Trial Court has wrongly dismissed the application under Order VII Rule 11 CPC and therefore the impugned orders are liable to be set aside.
8. The civil suit being filed by respondent/plaintiff before the learned Trial Court is for permanent injunction, declaration and possession. The respondents have submitted that they are legal heirs of late Khushi Ram Kain who had bought the suit property vide sale deed dated 28th August, 1968. Sh. Khushi Ram Kain passed away on 25th December, 1969 without disclosing the purchase of suit property to his legal heirs/plaintiffs/respondents. The plea of the plaintiffs/respondents before the learned Trial Court is that on 22nd December, 2018 when they were searching for some missing documents in the suit property, they found the registered sale deed/conveyance deed of the suit property. It has been submitted that since they came to know about the ownership of the suit property only



in the year 2018 they visited the suit property and found the defendants in possession of the same.

9. The petitioners upon the summons notice being served filed an application under Order VII Rule 11 CPC for dismissal of the suit on the ground that there is no cause of action to file the present suit and the plaintiffs had no legal right over the property in question. It has been submitted that the defendants are residing in the suit property since 1969 without any dispute or disturbance from any third party.
10. The defendants have also taken the plea that the suit is barred by limitation by virtue of Article 65 of the Limitation Act. The Trial Court dismissed the application of the petitioners/respondents *inter alia* on the ground that the sale deed being produced before the learned Trial Court does not even bear the signatures of Vendor and therefore the said documents cannot be said to create any right, title or interest.
11. Learned Trial Court also rejected the contention of the defendant/petitioner that the suit of plaintiff is barred by the limitation on the ground that the plaintiff has claimed the knowledge of the existence of the suit property in the name of late Khushi Ram Kain as well as its illegal occupation by defendant in the year 2018 itself.
12. Learned senior counsel during the arguments has taken a plea that since Smt. Krishna Devi has not been made a party, therefore, the suit is liable to be rejected. However, this plea was not taken before the learned Trial Court by the defendant/petitioner in their application under Order VII Rule 11 CPC nor the same was argued before learned Trial Court.



13. Learned senior counsel has submitted that in fact, his clients are not in possession of original sale deed in front of Late Kushi Ram Kian. It has been submitted that the certified copy of the sale deed was produced and it merely bears “sd”. Learned counsel submits that there was no procedure of photocopy and the certified copies were given in this fashion only.
14. Learned senior counsel submits that the subsequent sale deeds executed by late Khushi Ram Kain in favour of Smt. Krishna Devi and the sale deed executed by Smt. Krishna Devi in favour of Smt. Krishna Wadhera/petitioner are in her possession and the same are in the order. Order VII Rule 11 CPC reads as under:

“Rejection of plaint.- *The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails comply with the provision of Rule 9.*



Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

15. It is a settled proposition that while deciding such issues, the Court has to confine itself to the pleadings made in the petition and the documents relied upon in the plaint as a whole and if a cause of action is *prima facie* disclosed, the Court is not required to further inquire about truthfulness of allegations on fact. It is also a settled proportion that the pleas taken by defendants in written statement are not relevant at this stage. However, if the Court finds the suit to be manifestly vexatious not disclosing any right to sue, it would be justified in exercising the power under Order VII Rule 11A CPC.
16. In “**Dahiben v. Arvinbhai Kalyanji Bhanusali**”(2020) 7 Supreme Court Cases 366, it was inter alia held as under:

“The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with the documents relied upon, or whether the suit is barred by any law. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the



plaint, forms the basis of the plaint, it should be treated as a part of the plaint. 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. 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. 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. 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. If, however, on a meaningful reading of the plaint, it is found that the suit does not disclose right to sue, cause of action or suit is barred by any law and the court has no option but to reject the plaint and without any merit, Order 7 Rule 11 CPC. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."

17. The plaintiff/respondent had filed the present suit on the basis that the property in dispute is bought by their predecessor-in-interest and they are in possession of the same. The plaintiff's case is that the defendants have no right or title of interest over the suit property. Per contra, the case of the defendants is that their predecessor-in-interest



have purchased the property in interest from late Sh. Khushi Ram Kain.

18. It is a settled legal position that while exercising of power under Order VII Rule 11 CPC, the Court has only to see the averments made in the plaint and documents relied upon by the plaintiff.
19. It is also pertinent to mention here that the Court in its revisional jurisdiction can interfere into the order of learned Trial Court only if there is manifest illegality or perversity in the order of the learned Trial Court. It is advantageous to refer Section 115 of the CPC which provides that “the High Court may interfere into the order only if the sub-ordinate court has exercised the jurisdiction not vested in it by law or have failed to exercise jurisdiction so vested or have exercised of its jurisdiction illegally or with material irregularity.
20. I consider that none of the above appears in the impugned order. Hence, the revision petition along with pending application stands dismissed.

DINESH KUMAR SHARMA, J

JULY 5, 2022

Pallavi