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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 07th December, 2022

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C.R.P. 199/2022 & CM APPL. 52976-77/2022

TARUN VERMA

..... Petitioner

Through: Mr. K.K. Sharma and Mr. S. Khan,
Advocates.

versus

RATTAN SINGH VERMA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed assailing the order dated 13.09.2022 passed by the learned Trial Court, whereby the application filed by the Petitioner under Order VII Rule 11 CPC, 1908 has been dismissed. Petitioner herein is the Defendant in the suit and Respondent is the Plaintiff. Parties are hereinafter referred to by their litigating status before this Court.

2. Shorn of unnecessary details, the narrative of relevant facts is that Respondent filed a suit on 19.11.2019 against the Petitioner for possession, permanent injunction, damages and other reliefs, with respect to property bearing No.D-76, Amar Colony, Nangloi, Delhi. The property is stated to have been purchased by Late Sh. Prem Chand, father of the Respondent, who out of love and affection, allegedly executed a Gift Deed dated 21.07.2017, in favour of the Respondent, which was duly registered.

Petitioner states that he is in possession of the property, as a licensee.

3. It is the case of the Respondent before the Trial Court that when the Petitioner was asked to vacate the suit property, he in connivance with the other Defendants in the suit, refused to vacate, compelling the Respondent to file the suit.

4. Petitioner instead of filing the written statement, filed an application under Order VII Rule 11 CPC, 1908 stating that Respondent has no right, title or interest in the suit property. Respondent had left the suit property in the year 1999, as there was dispute between him and his wife and since 24.04.1999, Respondent is staying at Haryana and the residential details were also furnished in the application.

5. With respect to the Gift Deed, the stand of the Petitioner before the Trial Court is that the Gift Deed is not a valid document in the eye of law, as Late Sh. Prem Chand was suffering from various ailments, as mentioned in the application and therefore, he was not in a fit state to execute the Gift Deed. It is also the case of the Petitioner that Respondent had first got a Will executed on 19.07.2016, from his father and when the Will was revoked on 28.02.2017, Respondent set up a case of an alleged Gift Deed executed by his father, without being in actual possession of the suit property. It was also stated that a suit for cancellation of the Gift Deed has been filed by the Petitioner, which is pending in another Court. In sum and substance, the case of the Petitioner was that no cause of action arises in favour of the Respondent and the plaint be rejected at the threshold.

6. Respondent filed his reply to the application and after hearing the parties, Trial Court dismissed the application on the ground that the plea of the Petitioner that the Gift Deed has not been validly executed since Late Sh. Prem Chand was not in a fit condition to execute the same, is an issue which can only be decided after trial i.e. it is a triable issue and cannot be decided at this stage, merely on the basis of documents filed on record.

Therefore, according to the Trial Court, reading of the plaint as a whole, it cannot be said that the suit of the Respondent is without a cause of action.

7. Having heard the learned counsels for the parties and perused the impugned order as well as the plaint, this Court does not find any infirmity in the impugned order.

8. Principles and parameters for adjudication of an application Order VII Rule 11 CPC are well-settled and do not need much cogitation by this Court. The test is that the plaint has to be seen on a mere demurrer along with the documents filed with the plaint. The averments in the plaint have to be taken to be correct and it is not open to the Court at this stage to examine the defence set up by the Defendant. Equally settled is the proposition of law that issues which are disputed or can be decided only after the parties have led evidence i.e. they are triable, cannot be decided at the threshold merely on the basis of the documents unless the Court finds from a bare reading of the plaint taken as a whole that no cause of action is made out and on a meaningful reading of the plaint, it is vexatious, disclosing no right to sue. [*Ref.: Hardeh Ores (P) Ltd. v. Hede and Company, (2007) 5 SCC 614*]. In *Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and Another, (2004) 9 SCC 512*, the Supreme Court has held as follows:

“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.”

9. ‘Cause of action’ is every fact which would be necessary for the Plaintiff to prove, if traversed, to support his entitlement to a judgment and decree. In *Swami Atmananda and Others v. Sri Ramkrishna Tapovanam and Others, (2005) 10 SCC 51*, the Supreme Court held as follows:

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right

to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

10. It is trite that disputed questions of fact and issues which are triable, cannot form the basis of rejection of a plaint under Order VII Rule 11 CPC. A plain reading of the application under Order VII Rule 11 CPC, filed by the Petitioner before the Trial Court shows that it is predicated primarily on the ground that father of the Respondent had long back partitioned his properties between his sons and the Respondent, as per the family settlement dated 27.07.2001, had received his entire share including all immovable and movable properties and that the late father of the Respondent was not in a sound state of mind, suffering from paralysis since the year 2014. Therefore, according to the Petitioner, the purported Gift Deed was an invalid document. Possession of the Respondent was also disputed by the Petitioner. Relevant paras from the application are as follows:

“5. That the grandfather of applicant and the father of plaintiff long back partitioned his properties between his sons. The property at Amar Colony, Nangloi, Delhi was given to the father of applicant/defendant No.1 and Shri Ramesh Kumar, since deceased, similarly the other properties at Sampla, District-Jhajjar, Haryana stands partitioned. The present plaintiff as per the family settlement dated 27.07.2001 has received his share i.e. in all movables and immovable properties, the immovable properties were given including 400 Gms. Gold, plot of land at the out skirts of Sampla and cash amount of Rs.2 Lakhs prior to marriage of daughter of plaintiff. The plaintiff as such was left with no right, title and/or interest in respect of suit property. The plaintiff sold his share of the properties given by his deceased father, now the father of applicant has allowed him to stay in his property where he is still residing. The deceased grandfather of applicant was not having sound state of mind being suffering from paralysis since the year 2014, hence the alleged gift deed is nothing but a vague and baseless paper and hence the suit merits dismissal.

6. That the plaintiff has left the suit property in the year 1996 but finally on 24.04.1999 and since then living at Sampla, Haryana as per settlement dated 27.07.2001. There is no document [latest] to show that the plaintiff is in possession of the suit property and hence the suit merits dismissal.”

11. Respondent had filed a reply to the application taking a preliminary objection to the maintainability of the application citing the law laying down the parameters for determining whether the plaint is liable to be rejected or not. Respondent categorically denied that his late father had partitioned his properties between his sons and/or the Respondent had received his entire share in the inheritance. It was denied that late Sh. Prem Chand was suffering from any disease or was not in a sound state of mind and health and that at the stage of Order VII Rule 11 CPC, the Court is only required to examine the plaint and the averments therein on a plain demurrer, taking the averments to be true and correct. It was also urged before the Trial Court that the dispute relating to validity of the Gift Deed was a triable issue, which requires evidence.

12. Learned counsel for the Petitioner has reiterated the position taken before the Trial Court and has argued on the same lines and therefore, the arguments are not being captured separately for the sake of brevity. As aforementioned, at the stage of deciding an application under Order VII Rule 11 CPC, the Court is required to examine the plaint and the documents filed along with it, taking the averments to be true and correct unless it is apparently manifest that it is a totally vexatious, without any merit. Having gone through the plaint, which is on record, it is palpably clear that Respondent has set up a case that on 21.07.2017, late Sh. Prem Chand, out of love and affection, executed a registered Gift Deed in favour of the Respondent with respect to the suit property and stamp duty was also paid by the Respondent. Respondent had also filed the bank statement supporting the said payment. It is also averred that the Petitioner wanted to grab the entire family property and when late Sh. Prem Chand became aware of the *mala fide* intents, he transferred the suit property in favour of his wife, Smt. Kapuri Devi on 21.12.2006 *vide* registered G.P.A., Agreement to Sell, Will etc. It is stated that though late Sh. Prem Chand

suffered from paralytic attack on left leg and hand, he was working with the help of a worker and was in sound state of mind. Instances of some of the Defendants extending threats to the Respondent are also referred to in the plaint. Respondent has stated that cause of action arose in his favour when the Gift Deed was executed by his late father on 21.07.2017 and further arose on subsequent dates when disputes arose with respect to the possession of the property.

13. In my view, it cannot be accepted that the plaint does not disclose any cause of action in favour of the Respondent and is so vexatious or meritless that it deserves to be rejected at the threshold. Insofar as the issue of validity of the Gift Deed is concerned, as rightly observed by the Trial Court, the issue whether Late Sh. Prem Chand was suffering from unsoundness of mind or any other medical ailment so as to render the document invalid in law, is a triable issue and can only be decided once evidence is led by the parties and cannot form the basis of rejection of the plaint. Contentions raised by the Petitioner are thus wholly devoid of merit.

14. In view of the aforesaid, this Court finds no infirmity in the order of the Trial Court.

15. Accordingly, the present petition along with pending applications is dismissed, with no orders as to costs.

JYOTI SINGH, J

DECEMBER 07, 2022/sn/rk/shivam