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

% *Date of Decision: 21st December, 2022*

+ C.R.P. 216/2022

RANJAN KUMAR RAY Petitioner
Through: Mr. Irfan Ahmed, Advocate.

versus

TAPAN KUMAR RAY & ANR. Respondents
Through: Mr. Prashant Sharma, Advocate
for R-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 55867/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 216/2022 & C.M. APPL. 55866/2022

3. Present petition has been filed by the Petitioner laying a challenge to an order dated 06.09.2022 passed by the Trial Court in CS SCJ No. 1471/2021, dismissing the application filed by Defendant No. 1 under Order 7 Rule 11 CPC. Petitioner herein is Defendant No. 1 before the Trial Court while Respondent No. 1 is the Plaintiff and Respondent No. 2 is Defendant No. 2 and the parties are hereinafter referred to by their litigating status before the Trial Court.
4. Facts to the extent necessary and relevant for disposal of this Revision Petition are that Plaintiff filed a suit against his brothers Defendants No. 1 and 2 seeking the following reliefs:-

“a) *Pass a decree of permanent injunction and mandatory*

injunction in favour of the Plaintiff and against the Defendants no. 1 and 2, their agents, assignee, associates, their henchmen or any other person acting on their behalf for causing disturbance, hurdle, interference and restraining in the peaceful entry, peaceful enjoyment and construction on the second floor i.e. on the roof of the first floor in the said property i.e. suit property (as clearly shown in the site plan attached to the present plaint); and/or

b) Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendants no. 1 and 2, their agents, assignee, associates, their henchmen or any other person acting on their behalf thereby directing the Defendants not to create any obstruction in the construction of rooms by the Plaintiff at the second floor, and/or

c) Pass a decree of mandatory injunction in favour of the Plaintiff and against the Defendants no. 1 and 2 thereby directing the Defendant no. 1 and 2 to construct staircase for accessing the second floor i.e. the roof of the first floor of the said premises in order to allow the Plaintiff to access and ensure free passage, free ingress and egress to and to the 1st floor room of premises of the suit property for the purpose of carrying out construction work of rooms at the 2nd floor of the said premises; and/or

d) Pass a decree of permanent and mandatory injunction in favour of the Plaintiff and against the Defendants no. 1 and 2 thereby directing the Defendants no. 1 and 2 not to stop the Plaintiff and his family members from constructing the said property at the second floor i.e. the roof of the first floor (more specifically shown as "open terrace" in the attached site plan)."

5. Claim of the Plaintiff before the Trial Court is that he had purchased the suit property bearing No. J-1929, Chittaranjan Park, New Delhi, jointly with the Defendants, from the erstwhile owners, Ms. Niharika Banerjee and Mrs. Mukul Bhattacharya, through their General Power of Attorney holder, Mr. Gautam Ganguly by a Sale Deed dated 01.02.2007.

6. It is averred that prior to the purchase of the suit property, which was partly constructed upto the first floor, parties entered into a Mutual Agreement dated 15.01.2007, agreeing and authorizing the Plaintiff to construct rooms on the second floor of the suit property. It was also agreed that Defendant No. 2 shall occupy the ground floor,

Defendant No. 1 shall occupy the first floor and the Plaintiff shall be at liberty to construct on the second floor.

7. The suit was filed by the Plaintiff primarily asserting that despite approaching the Defendants, there has been resistance in cooperating for carrying out construction on the second floor. Defendants have failed to honor the undertaking *qua* facilitation for construction of staircase for access from the first floor to the terrace, as agreed under the Mutual Agreement compelling the Plaintiff to file the suit, from which the present petition arises.

8. On being served with summons, Defendant No. 1 filed an application under Order 7 Rule 11 CPC, seeking rejection of the plaint *inter alia* on the ground that since the parties are absolute co-owners of the suit property, unless and until the shares of the parties are determined, Plaintiff cannot seek to make construction or any alteration in the suit property. It was also stated that Defendant No. 1 has filed a suit being CS(OS) No. 23/2022 titled '**Ranjan Kumar Ray v. Bidhan Chandra Roy and Anr.**', seeking partition and permanent injunction of the suit property which is pending in this Court, where the Court has directed parties to maintain status quo *qua* possession and title of the suit property. In a nutshell, according to Defendant No.1 no cause of action at this stage arises in favour of the Plaintiff and the plaint deserves to be rejected at the threshold.

9. The Trial Court after considering the arguments of the parties to the *lis*, *vide* the impugned order, dismissed the application under Order 7 Rule 11 CPC, leading to the filing of the present petition and operative part of the impugned order is as follows:-

"7. The suit before the Hon'ble High Court of Delhi is admittedly one for partition. Whether or not the rights as claimed by the Plaintiff can be legitimately pressed for raises a purely triable

issue. Thus, no ground is made out for rejection of the plaint. Accordingly, the application under Order VII Rule 11 CPC is hereby dismissed as devoid of merits.”

10. Learned counsel for the Petitioner, assailing the impugned order, contends that: (a) Plaintiff has alleged in the plaint that he and the Defendants are absolute co-owners of the suit property and therefore unless the shares of the parties are determined in the suit for partition pending before this Court, Plaintiff cannot construct, alter or add to the suit property and therefore, a suit for injunction is not maintainable; (b) this Court in CS(OS) No. 23/2022, has directed status quo *qua* possession and title of the suit property; (c) since Plaintiff is admittedly not in possession of the suit property, he is not entitled to relief of injunction, by virtue of Section 38 of the Specific Relief Act, 1963; and (d) property is 40 year old and any construction on the existing structure would result in collapse of the building.

11. I have heard learned counsels for the Petitioner and Respondent No. 1 and examined their rival contentions.

12. Law with regard to deciding an application under Order 7 Rule 11 CPC is no longer *res integra*. It is settled that while deciding the issue whether the plaint is liable to be rejected at the threshold, the Court has to examine only the plaint on a mere demurrer along with the documents filed by the Plaintiff and the defence set up by the Defendant is wholly irrelevant.

13. In ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706***, the Court held as follows:-

“13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to

enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

14. In **Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC**

137, the Supreme Court held as under:-

"11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)"

15. It would also be useful to allude to the judgment in **Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174**, where the Supreme Court observed as follows:-

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial

while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

16. From the conspectus of the aforesaid judgments, it clearly emerges that while examining the application under Order 7 Rule 11 CPC, the Court must read the plaint meaningfully and not merely formally or mechanically and only when a bare reading of the plaint shows that it is manifestly vexatious and meritless i.e. disclosing no right to sue, the power of rejection of the plaint should be exercised. In the present case, the Plaintiff has clearly averred in several paragraphs of the plaint that the Plaintiff and his brothers Defendants No. 1 and 2 are the sole and absolute co-owners of the suit property and are in joint possession. It is also averred that parties had entered into a Mutual Agreement dated 15.01.2007 whereby it was decided as to which portions of the property would be occupied by each of the three parties and by the same Agreement it was also decided that the Plaintiff would be entitled to construct on the second floor of the suit property and Defendants shall construct a staircase from first to the second floor giving access to the Plaintiff for carrying out construction on the second floor of the suit premises. Plaintiff has also referred to the e-mails sent to Defendant No. 1 followed by a legal notice for construction of the staircase to enable the Plaintiff to construct on the second floor. Therefore, the contention of Defendant No. 1 that the plaint discloses no cause of action is without any merit.

17. Insofar as the contention of Defendant No. 1 that the suit is barred under Section 38 of the Specific Relief Act, 1963 is concerned,

the Plaintiff has repeatedly asserted in the plaint that he is in joint possession of the suit property and at this stage the plaint has to be seen on a mere demurrer. It is true that a suit for partition between the parties is pending in this Court, however, the interim order is restricted to maintaining status quo *qua* possession and title of the suit property and merely on this ground the present suit, which is predicated on the rights arising out of the Mutual Agreement, cannot be dismissed for want of cause of action. Pertinent it is to note that even in the application filed by Defendant No. 1 under Order 7 Rule 11 CPC, it is not the case of the Applicant that the Plaintiff and Defendants No. 1 and 2 are not occupying the portions of the suit property in accordance with the Mutual Agreement. Therefore this Court finds no infirmity with the order of the Trial Court, impugned herein.

18. For all the aforesaid reasons, there is no merit in the present revision petition and the same is dismissed along with pending application.

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JYOTI SINGH, J

DECEMBER 21, 2022/sn/shivam