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

Date of decision: 08th AUGUST, 2023

IN THE MATTER OF:

\+ **C.R.P. 189/2023 & CM APPLs. 36762-64/2023**

SHRI ARVIND KUMAR ..... Petitioner

Through: Mr. Rajeev Saxena, Advocate.

versus

SMT. MANOJ KUMARI & ORS. ..... Respondents

Through: Mr. Jogender Kumar, Advocate for R-4

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. By way of this revision petition, the Petitioner seeks to challenge an Order dated 14.03.2023 passed by the learned Additional District Judge, Rohini Courts in CS DJ No.638/2021 dismissing an application filed by the Petitioner for rejection of the plaint of Respondent No.1 herein under Order VII Rule 11 CPC.

2. The Respondent No.1 herein is the Plaintiff in a suit for declaration, partition possession, rendition of accounts, recovery of rent and permanent injunction.

3. The impugned order reveals that the Plaintiff had valued the suit property at Rs.85,00,000/-. The Petitioner herein filed an application under Order VII Rule 11 CPC praying for rejection of the plaint stating that the suit has not been valued properly and appropriate court fee has not been affixed.

4. It is stated in the application that the father of the Petitioner had executed a Will dated 07.08.2009 in favour of the Petitioner and the suit of the Plaintiff is not maintainable on the ground that no cause of action as alleged arise in Delhi and, therefore, suit of the Plaintiff is not maintainable. The application further states that the value of the property is more than Rs.5,00,00,000/- and the Court where the suit had been filed did not have the pecuniary jurisdiction to entertain the suit.

5. It is further stated that the Plaintiff has not been in possession of the suit property and they have also not affixed proper court fee to claim partition and, therefore, the suit is liable to be dismissed. The said application came up for hearing before the learned Additional District Judge on 14.03.2023.

6. The learned Additional District Judge by the impugned order rejected the application stating that the Delhi circle rates are not relevant for the purpose of valuation of the suit property and for the suits which are filed before the Civil Courts when an application under Order VII Rule 11 CPC is considered, the Court is bound by the valuation which is done by the Plaintiff and whether the suit is under-valued or not is a matter of trial and the defendants shall be at liberty to lead evidence in this regard at that stage.

7. The learned Additional District Judge held that question of court fee to be paid on the basis of the relief that has been claimed also cannot be gone into the stage of passing an order under Order VII Rule 11 CPC since the Plaintiff has claimed joint possession and there is no averment in the plaint regarding exclusion of the Plaintiff from the suit property and, therefore, the Plaintiff was not liable to pay the court fee.

8. The learned Additional District Judge further held that the Will that has been relied upon by the Petitioner cannot be taken into consideration at the time of application under Order VII Rule 11 CPC since the court while considering an application under Order VII Rule 11 is bound to only consider the plaint and documents which have been filed by the Plaintiff and the defence set up by the Defendants cannot be considered at that stage.

9. Heard learned Counsel for the parties and perused the material on record.

10. It is well settled that Section 7(iv)(c) of the Court Fees Act, 1870 stipulates that the Plaintiff is free to make his own estimate under the reliefs sought in the plaint and such valuation for the purpose of court fee and jurisdiction has to be ordinarily accepted by the courts. The Apex Court in <u>Tara Devi v. Sri Thakur Radha Krishna Maharaj, trhough Sebaits Chandeshwar Prasad and Meshwar Prasad & Anr.</u>, **1987 (4) SCC 69,** has observed as under:-

> *"**4**... It is now well settled by the decisions of this Court in Sathappa Chettiar v. Ramanathan Chettiar [AIR 1958 SC 245 : 1958 Mad LJ (Cri) 148 : 1958 SCR 1024] and Meenakshisundaram Chettiar v. Venkatachalam Chettiar [(1980) 1 SCC 616 : AIR 1979 SC 989 : (1979) 3 SCR 385] that in a suit for declaration with consequential relief falling under Section 7(iv)(c) of the Court Fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been*

> *demonstratively undervalued, the court can examine the valuation and can revise the same...”*

11. The learned Trial Court while dismissing an application under Order VII Rule 11 CPC is justified in contending that the circle rates cannot be considered at the time of deciding an application under Order VII Rule 11 CPC and that this issue can be considered at a later stage and a specific issue can be framed regarding the valuation of the suit and after leading evidence, the issue can be considered.

12. The Apex Court in M/s Commercial Aviation & Travel Company & Ors. v. Vimla Pannalal, **1988 (3) SCC 423**, has observed as under:-

> *“9. In this connection, we may refer to the provision of Order VII, Rule 11 (b) of the Code of Civil Procedure, which provides, inter alia, that the plaint shall be rejected 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. It is manifestly clear from the provision of Order VII, Rule 11(b) that a court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter. If the court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation*

> *that has been made by him. Indeed, in a suit for accounts it is also difficult for the court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the court has no other alternative than to accept plaintiff's valuation tentatively.*
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> *xxx*
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> *12. In the above decision, this Court took the view that the conversion of the plaintiff's undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. It is true that the court did not consider whether the plaintiff had been given an absolute right or option to place any valuation whatever on his relief under the provision of Section 7(iv) of the Court Fees Act, but the difficulty that would be felt by the court in exercising its power under Order VII, Rule 11(b) of the Code of Civil Procedure is that if it is unable to determine the correct value of the relief, it cannot direct the plaintiff to correct the valuation. Order VII, Rule 11(b) contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the court. If the court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, Order VII, Rule 11(b) will not be applicable."*

13. The suit is one for declaration, partition possession, rendition of accounts, recovery of rent and permanent injunction filed by the sister against her brother. As a co-owner, it is the case of the Plaintiff that she is in constructive joint possession of the suit property and since the Plaintiff claims joint possession and there is nothing in the plaint which shows that she had excluded the Petitioner from the suit property, the order of the

learned Trial Court that the Plaintiff is not required to pay any court fee, does not require any interference.

14. It is settled law that while deciding an application under Order VII Rule 11 CPC only the plaint should be seen and the defence which is set up/intended to be set up by the defendant is of no relevance. [Refer to:- Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors, **(2021) 9 SCC 99,** Kamala & Ors. v. K T Eshwara SA & Ors., **2008 (12) SCC 661,** Shakti Bhog Food Industries v. Central Bank of India & Ors., **2020 SCC OnLine SC 482]**.

15. The learned Trial Court, therefore, is justified in ignoring the defence disregarding Will taken by the Petitioner herein at that stage. The order of the learned Trial Court does not require interference.

16. Needless to state that it is always open for the learned Trial Court to open the issue regarding valuation of the suit.

17. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 08, 2023
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