



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

% **Date of order : 4th September, 2023**

+ **C.R.P. 241/2023 and CM APPL Nos. 45399/2023 45400/2023**

SHELLEN KUMAR BAJAJ

..... Petitioner

Through: Mr. Mayank Wadhwa,
Mr. Shorya Goel and Ms. Niti
Khanna, Advocates

versus

DHEERAJ KUMAR BAJAJ & ANR.

..... Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL No.45399/2023

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.R.P. 241/2023 and CM APPL No. 45400/2023

1. The petitioner vide the present petition under Section 115 of the Code of Civil Procedure, (hereinafter referred to as 'CPC') seeks the following reliefs:

“A. Set aside the Impugned Order dated 29.04.2023 passed in Civil Suit No. 613 of 2019 by Ms. Shivali Bansal Additional District Judge-03 (North) Rohini Courts, Delhi;



B. Call for the record of the Suit bearing no. Civil Suit No. 613 of 2019 titled {Dheeraj Kumar Bajaj v. Shellen Kumar Bajaj and Anr.}

C. Dismiss/Reject the Suit bearing no. Civil Suit No. 613 of 2019 titled (Dheeraj Kumar Bajaj v. Shellen Kumar Bajaj and Anr.' As not maintainable.

D. Grant any other relief as this Hon'ble Court may deem fit in the facts and circumstances of this case."

2. Learned counsel for the petitioner submitted that Smt. Meenakshi ("Testator") inherited the entire suit property EA/6 Model Town Part I, Delhi 110009 ("Suit Property").The petitioner and respondents of the present petition are the legal heirs of the testator.

3. It is submitted that the petitioner has the physical possession and occupancy of the Second Floor along with the roof over the second floor and the Respondent no. 1 and 2 jointly are in possession of the first floor of the property. The ground floor was sold to one Smt. Roopa Sharma on 6th July 2005 by way of Collaboration Agreement.

4. It is further submitted that the said agreement was secured by way of Memorandum of Family Settlement (MoFS) dated 15th January 2015 which was duly executed and signed by all the parties.

5. It is submitted that the testator passed away on 30th August 2012. Pursuant to which, Sh. Vikas Aggarwal, Advocate, informed the parties to said petition about the Will dated 20th March 2015 executed by the testator, which was in his possession and parties to collect copies of the Will. The said Will was supplied to the bank by respondent no. 2.

6. It is contended that the parties to the petition received a demand letter



dated 16th October 2018 from the Bank of Baroda, for payment of the balance amount of the Loan that the Testator availed by mortgaging the First Floor without roof rights of the Property; it was only at this point that the petitioner was apprised of the said loan taken by the testator. The petitioner replied to the said letter on 22nd October 2018 and supplied copy of Memorandum of Family Settlement dated 15th January 2015 along with the will of the testator.

7. It is submitted that the petitioner sent a legal notice dated 19th March 2019, to the respondent for the purpose of signing the documents for mutation of the Property in terms of the MoFS dated 15th January 2015 and the Will dated 20th March 2015. Respondent no. 1 replied to the said legal notice on 29th March 2019 denying the execution of the Will and the MoFS.

8. It is submitted that the executor of the Will dated 20th March 2015 issued a letter to the respondents for the purpose of authentication of Will.

9. It is submitted that the respondents no. 1 and 2 sent two identical undated letters to the Bank of Baroda in response to the Bank's letter dated 16th October 2018, informing the Bank about another Forged Will.

10. It is submitted that the petitioner found out about an alleged will dated 12th December 2017 for the first time via the Bank's written statement dated 19th September 2019 filed in another suit, i.e., Suit for Declaration filed by the Plaintiff bearing number C.S. 404/2019.

11. It is further submitted that no copy of the said Forged Will was ever shared with the petitioner despite a legal notice dated 13th November 2019 was sent by the petitioner seeking disclose of the said will dated 13th



November 2019.

12. It is submitted that the Forged Will is the subject of a criminal investigation initiated after lodging of FIR bearing no. 405/2022.

13. It is submitted that the respondent no. 1 filed a false and frivolous suit bearing no. CS DJ 613/ 2019 on the basis of the forged will dated 13th November 2019.

14. It is submitted that the petitioner filed a detailed written statement in the matter and subsequently filed an application under Order VII Rule 11 of the CPC which was dismissed by the Court below vide order dated 29th April 2023.

15. It is submitted that the learned Court below wrongly dismissed the application of the petitioner in an arbitrary manner without any application of mind and wrongly concluded the following '*The plaint has disclosed a cause of action ...* '. The Court below has wrongly observed the same and has completely ignored the submissions by the learned Court below.

16. It is submitted that the impugned order is an unreasoned, unspeaking, arbitrary order that shows absolute non-application of mind and is, therefore, liable to be set aside.

17. It is submitted that there is *ex-facie* arbitrary, illegal, unjustified, perverse and amounts to a material irregularity in the exercise of its jurisdiction by the learned Court below. The impugned order is against the settled principle of law regarding Order VII Rule 11 of CPC and as such is liable to be set-aside.

18. In view of the foregoing paragraphs, the learned counsel for the



petitioner submitted that the instant revision petition may be allowed and the reliefs sought may be granted.

19. Heard learned counsel appearing on behalf of the petitioner and perused the record including the impugned order.

20. Keeping in view the arguments advanced, the following issue has been framed for adjudication by this Court:

Whether the learned Trial Court was in error while passing the impugned order, thereby, rejecting the application of the petitioner under Order VII Rule 11 of the CPC?

21. Before embarking upon the merits of the case, it is imperative to understand the scope, nature and object of Order VII Rule 11 of the CPC and Section 115 of CPC under which the instant petitioner has been preferred by the petitioner.

22. The Hon'ble Supreme Court in ***T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467***, observed that if on a meaningful and informal reading of the plaint, the averments are manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC.

23. In another judgment by the Hon'ble Supreme Court in ***Church of North India v. Lavajibhai Ratanjibhai, (2005) 10 SCC 760***, the scope of exercising the power under Order VII Rule 11 of the CPC was enunciated. The following was observed:

“39. A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the



plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure.”

24. In the matter of ***Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar***, (2018) 6 SCC 422, the Hon’ble Supreme Court has further reaffirmed the scope of provisions stating rejection of the plaint and held as under:

“17. These decisions have been noted in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , where this Court, in para 11, observed thus : (SCC p. 714, para 11)

“11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any



time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot be procedural irregularity touching the exercise of jurisdiction by the trial court.'

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100]."

25. In an application under Order VII Rule 11 of the CPC, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments in the plaint. Order VII Rule 11 of the CPC established a remedy that is made available to the defendant to challenge the maintainability of the suit itself, irrespective of the defendant's right to contest the suit on merits.



26. The provision ostensibly does not state at any stage when the objections to suit can be raised before the trial Court. Further, it does not say in explicit words about the filing of a written statement. Instead, the word “shall” is used, , thereby, it obligates a duty on the Court to reject the plaint in case the said plaint is hit by any of the infirmities provided in the four clauses of Order VII Rule 11 of the CPC, even without the intervention of the defendant.

27. Therefore, it is a settled position of law that in order to reject a plaint for the suit under any of the clauses mentioned in Order VII Rule 11 of the CPC, the Court needs to be guided by the reading of the averments in the plaint and not the defense taken.

28. The ambit of Section 115 of the CPC, has been appreciated by the Courts through a catena of judgements. The said provision only confers a supervisory power to this Court with the main aim of keeping superintendence. It embarks a particular limitation prescribing that the High Court shall not interfere merely, because the Court below has wrongly decided a particular suit being not maintainable.

29. Hence, only in cases where there is an error apparent on face of it, the High Court must interfere with the order of the Trial Court and not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court. This view has also been reaffirmed in the judgment of the Hon’ble Supreme Court in ***D. Sasi Kumar v. Soundararajan*, (2019) 9 SCC 282 : (2019) 4 SCC (Civ) 358 .**



30. The scope as discussed hereinabove has also been observed by the Hon'ble Supreme Court in ***Varadarajan v. Kanakavalli***, (2020) 11 SCC 598 as follows:

“15. In addition to the nature of proceedings to implead the legal representative to execute the decree, we find that none of the tests laid down in Section 115 of the Code were satisfied by the High Court so as to set aside the order passed by the executing court. The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing court as if it was acting as the first court of appeal. An order passed by a subordinate court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing court. Consequently, the order passed by the High Court is set aside and that of the executing court is restored. The appeal is allowed.”

31. In view of the above, it is clear that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors thereto but shall limit itself to the question of errors of exercise of jurisdiction.

32. The impugned order dated 29th April 2023 has been reproduced herein below:

“1. Vide this order, I shall be disposing off the application of the defendant no. 2 under Order 7 Rule 11 CPC.

2. Ld. counsel for the defendant no. 2 in his application has stated that the plaint of the plaintiff is based upon destructive pleas i.e. on



the basis of a Will allegedly executed on 12.12.2017 by the Late mother of the plaintiff and the defendant no. 2 as well as on the basis of Section 15(1)(a) of the Hindu Succession Act, 1956 as Class- I legal heirs. It is also stated that the suit of the plaintiff is barred by law and the suit does not disclose a cause of action. It is stated that the Will dated 12.12.2017 is a false and fabricated document and the plaintiff has applied to this court for partition on the basis of said Will without even getting the said Will probated / authenticated by the Probate Court which is barred by law. It is stated that plaintiff is trying to bypass the mandatory process of filing of a probate petition to achieve his malicious goal of avoiding the legitimate payment of outstanding loan to the Bank of Baroda. It is stated that instant plaint is a backlash to CS No. 404/2019 which is filed by the defendant no. 2 against the plaintiff, defendant no. 1 and the Bank of Baroda. The defendant no. 1 has also relied upon his WS to support the present application for rejection. On the aforesaid stated ground, the defendant no. 1 has sought rejection of the plaint.

3. Per Contra, Ld. Counsel for the plaintiff in his reply has stated that it is a settled law that WS cannot be consider while deciding an application under Order 7 Rule 11 CPC. Ld. Counsel for the plaintiff

has stated that the Will dated 12.12.2017 is the last Will of his mother and is not a forged and fabricated document. It is also stated that whether Will dated 12.12.2017 is forged and fabricated, has to be decided after leading of evidence and the same cannot be a ground for rejection of plaint. It is also stated that the plaintiff has filed the present suit for partition on the basis of Will dated 12.12.2017 and not as a Class – I legal heir / intestate succession. Ld. Counsel for the plaintiff has relied upon the judgment of the Hon'ble Supreme Court titled as “Clarence Pais & Ors. Vs. Union of India, in Civil Appeal No. 5823/2019 arising out of SLP (Civil) No. 19096 of 2017” and has stated that probate of Will for a property situated in Delhi is not required as per law. It is also



stated that the plaintiff has disclosed a cause of action and the application of the defendant deserves to be dismissed with cost.

Heard. Record perused.

4. The plaintiff has filed the present suit for seeking partition and permanent injunction of the suit property against the Class – I legal heirs of Late Smt. Meenakshi Bajaj, who was the owner of the suit property on the basis of the Will dated 12.12.2017. It is the case of the plaintiff that Late Smt. Meenakshi Bajaj has executed a Will dated 12.12.2017, whereby an equal share of the suit property was bequeathed in favour of all her legal heirs i.e. the plaintiff and the defendants. The plaintiff in his plaint has stated that the Will dated 12.12.2017 is the last Will of his deceased mother i.e. Late Smt. Meenakshi Bajaj and the purported Will dated 20.03.2015 relied upon by the defendant no. 2 is a sham document which is prepared by defendant no. 2 by playing fraud upon the mother of the plaintiff. It is stated by the plaintiff that the plaintiff is entitled to 1/3rd share of the suit property on the basis of the Will dated 12.12.2017 and therefore, has filed the present suit for seeking partition and permanent injunction.

5. This court is of the considered opinion that the plaint of the plaintiff is not liable to be rejected. This court is convinced with the submissions made by the Ld. Counsel for the plaintiff in his reply to the present application. The plaint has disclosed a cause of action and it is correctly pointed out by the plaintiff that the plaintiff has raised his claim on the basis of Will and not on the basis of intestate succession. It is a matter of trial whether Will dated 12.12.2017 is a forged or fabricated document or not and therefore, this cannot be a ground for rejection of plaint. The Ld. Counsel for the plaintiff has rightly stated that the probate of Will is not mandatory in Delhi and therefore, even this cannot be a ground for rejection of plaint. Accordingly, the application of the defendant no. 2 is dismissed.”



33. The grievance of the petitioner is that the plaint does not any cause of action since the Will dated 12th December 2017 is a false and fabricated document. The respondent has applied for partition on the basis of the said Will without even getting the said Will probated/authenticated by the Probate Court therefore, is barred by law. It is contended by the petitioner that the respondent is bypassing the mandatory process of filing probate petition to avoid re-payment of the loan to the Bank of Baroda. The suit is filed as a backlash to the suit filed by the petitioner.

34. The learned Trial Court held that the plaint has disclosed a cause of action since the respondent has contended that he has raised a claim on the basis of the Will dated 12th December 2017 and not on the basis of intestate succession. The issue of whether the said Will is false or fabricated is a matter of trial. It was further held by the learned Trial Court that the probate of Will is not mandatory in Delhi, therefore the same does not qualify as a ground for rejection of the plaint.

35. This Court is of the view that the learned Trial Court has correctly held that whether the will dated 12th December 2017 is a false or fabricated document is a triable issue. Moreover, the plaint cannot be rejected on the ground that the respondent is trying to bypass the process of filing probate petition since the same is not mandatory in Delhi.

36. On the perusal of the above discussion, it is held that the learned Trial Court had the powers and jurisdiction to pass the said impugned Order. This Court finds that no case of revision is made out as there was no illegality with the jurisdiction of the Trial Court. The learned Trial



Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity. Therefore, the present petition is liable to be dismissed.

37. Accordingly, the issue framed is decided.

38. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned Order dated 29th April 2023 passed by Ms. Shivali Bansal Additional District Judge-03 (North) Rohini Courts, Delhi.

39. Accordingly, the instant petition stands dismissed.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 4, 2023

SV/DB

Click here to check corrigendum, if any