



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order: 14th September, 2023**
 + C.R.P. 251/2023 & CM APPL. 47392/2023 & CM APPL. 47391/2023
 MR. PANKAJ VOHRA AND ANR. Petitioners

Through: Appearance not given

versus

MRS. ANJU VOHRA AND ORS. Respondents

Through: Mr. Aaditya Vijaykumar and Ms. Shreya Shree Sing, Advocates for R-1 to R-3
 Mr. Angad Singh, Mr. Diwakar and Ms. Namly Shah, Advocates for R-4

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 of the Civil Procedure, 1908 (hereinafter "CPC"), has been filed on behalf of the petitioners seeking the following reliefs:

"A. Set aside the Impugned Order dated 05.08.2023 passed in Civil suit CS DJ No. 649 of 2022, titled as 'Anju Vohra and Ors. V/s. Pankaj Vohra and Ors.', filed by the Respondents 1, 2 and 3, before Ms. Purva Sareen Additional District Judge-03 (South) Saket Courts, New Delhi.



B. Pass orders with regard to the Application Under Order XXXIX Rule 4, read with Section 4 of the CPC, which has been dealt with by the Ld. ADJ, in the order dated 05.08.2023.

C. Call for the record of the Suit bearing no. Civil suit CS DJ No. 649 of 2022, titled as 'Anju Vohra and Ors. V/s. Pankaj Vohra and Ors.'

D. Dismiss/Reject the Civil suit CS DJ No. 649 of 2022, titled as 'Anju Vohra and Ors. V/s. Pankaj Vohra and Ors.' As not maintainable, with exemplary costs against the Respondents for causing undue and uncalled for harassment to the Petitioners and for misusing the process of this Hon'ble court.

E. Award litigation costs and exceptional damages in favour of the Petitioners and against the Respondents as a deterrent from initiating bogus litigation/s;

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

2. The brief facts of the matter have been recapitulated herein :
 - a) The petitioner no. 1 is the brother-in-law and the petitioner no. 2 is the wife of Late Mr. R. S. Vohra. The respondent no. 2 is the mother-in law of respondent no. 1. The respondent no. 2 and 3 are the son and daughter of respondent no.1.
 - b) The respondents had filed a Civil Suit bearing no. CS DJ 649/2022, before the learned Court below filed for declaration, possession, mesne profit and injunction against the petitioner/defendants *qua* the cancellation of relinquishment deed dated 18th October 2021 and gift deed dated 17th March



2022.

- c) In the above said Civil Suit, the petitioner had moved an application under Order VII Rule 11 of the CPC, for rejection of the plaint on the ground of lack of cause of action. The said application was dismissed by the learned Trial Court *vide* order dated 5th August 2023.
- d) Being aggrieved by the said dismissal, the petitioner has filed the present petition against seeking revision of the impugned order dated 5th August 2023.
3. Learned counsel appearing on behalf of the petitioners submitted that while passing the impugned order, the learned Trial Court, did not consider the fact that the Suit filed by the respondents lack cause of action and the respondents have failed to establish the same.
4. It is contended that the respondents have not placed the relevant facts on record to establish it's 'cause of action' in the said Suit, hence, the plaint failed to establish any such legal right accrued in favour of the respondents.
5. It is submitted that the respondents have wrongfully made an allegation against the respondent no.3 i.e., the Registrar for ignorance of the duly executed Relinquishment Deed, since the registration of any document is a process which takes some time before the actual execution of the same.
6. It is submitted that by alleging violence and harassment against the petitioners in the plaint, the respondents have wrongfully attempted to create an impression of the petitioners which is *prima facie malafide*, consequently leading petitioner no.1 to escape from the country after liquidating their



business and properties.

7. The learned counsel for the petitioners submits that the whilst passing the impugned order, the learned Trial Court made an error in exercising its jurisdiction and the same suffers from material irregularities since the same was passed consider the oral and written submissions made before it therefore, making it violative of principles of natural justice, equity, and law.

8. It is submitted that the learned Court below reached on the wrong conclusion that there is cause of action accrued in favour of the respondents for the adjudication of the Suit filed by the respondents/plaintiffs.

9. It is submitted that in view of the foregoing paragraphs, the instant petition may be allowed and the impugned order be set aside by this Court.

10. *Per Contra* the learned counsel appearing on behalf of the respondents appeared on advance notice and vehemently opposed the instant petition.

11. It is submitted that the learned Trial Court has duly taken into consideration the submissions of both the parties and had accordingly, passed the impugned order.

12. It is further submitted that upon mere plain reading of the plaint, it is established that the cause of action had duly accrued in the respondents' favour and there is no illegality in the impugned order passed by the learned Court below.

13. It is therefore submitted that the instant petition, being devoid of any merits, is liable to be dismissed.

14. Heard learned counsel for the parties and perused the record.

15. This Court has perused the impugned order dated 5th August 2023



passed by the learned Court below. For proper adjudication of the instant matter, it is necessary to reproduce the findings and reasons given by the learned Trial Court. The relevant paragraphs of the said impugned order have been reproduced hereunder:

“...It is a settled law that the Court has to only look into the plaint while deciding the application under Order 7 Rule 11 (Conzer Systems Pvt Ltd. Vs. P. K. Babu & Ors., decided by Hon’ble High Court of Delhi on 20.08.2008), (Saleem Bhai Vs State of Maharashtra, Civil Appeal 8518/2002, decided by the Hon’ble Supreme Court of India).

As the Court has to only look into the plaint for deciding the application under Order VII Rule 11 CPC, the court cannot go into the written statement or the defence of the defendant while judging the said application. The court is of the view that the averments made by the defendant in the application do not bar the claim of the plaintiff on the ground that there is no cause of action. The interpretation of the will is itself a matter of trial and needs to be decided by leading evidence by both the parties. Further, whether the relinquishment deed were got executed by force and fraud, is also a triable issue to be decided after evidence of both the parties is conducted before the court. Therefore, the plaint further cannot be stated to devoid of cause of action also from the facts stated by the plaintiff. Hence, the application under Order 7 Rule 11 does not hold any merit and the same stands dismissed without any cost...”

16. 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 also of Section 115 of the CPC, under which the instant petition has been preferred by the petitioner.



17. The Hon'ble Supreme Court in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, had 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.

18. 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, has established a remedy that is made available to the defendant to challenge the maintainability of a suit itself, irrespective of the defendant's right to contest the suit on merits.

19. The provision reiterated that the said application can be moved at any stage when the objections to suit can be raised before the trial Court. Instead, the word "shall" is used, , thereby, it obligates a duty upon the Court to reject the plaint in case it 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.

20. 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 by the defense taken.

21. With regard to the ambit of Section 115 of the CPC, it is a settled position of law that the said provision only confers a supervisory power to this Court with the main aim of keeping an oversight on the Courts below.



Section 115 of the CPC, provides a restraint on the exercise of the power by the High Court and it further states that the Court shall not interfere until there is an error apparent on the face of the impugned order passed by the Court below.

22. Under section 115 CPC, a High Court does not sit as an appellate Court. Therefore, the Court while 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.

23. Based upon the above said principles, I will now examine the facts of the present case.

24. In the present facts, the petitioners had filed an application under Order VII Rule 11 of the CPC, on the ground that there is an absence of cause of action in the Suit instituted by the respondents. It has been stated that the Will dated 19th January 2009, of Mr. R. S. Vohra was duly accepted and relied upon by the respondents themselves. It has been further stated that the petitioners have admitted the Relinquishment Deed and have duly relinquished their right in terms of the above said Will. As the said Will was never challenged by any of the and the Relinquishment Deed was executed in pursuance of the Will, no cause of action exists in the present suit.

25. The learned Trial Court held that under Order VII Rule 11 of the CPC, the Court has to only look into the averments made in the plaint, hence, the Court has to look into the aspect whether the plaint has disclosed a cause of action. It further held that the interpretation of the said Will is a matter of trial and requires examination of the evidences as adduced by both the



parties. Moreover, the issue whether the said Relinquishment Deed is executed by fraud and force is a triable issue. Hence, the learned Trial Court held that the plaint discloses a cause of action and the above said has been filed in pursuance to the same.

26. This Court is of the view that the learned Trial Court has correctly held that the cause of action has been correctly disclosed in the plaint, thereby, raising the issue of interpretation of Will. The another triable issue raised by the plaint is whether the relinquishment deed is executed by fraud and force.

27. Under Section 115 of the CPC, this Court shall intervene only if the Court below has exercised its jurisdiction illegally or if there is found to be a material irregularity in the exercise of jurisdiction by the Trial Court. In view of the present facts, there is no such illegality or material irregularity in exercise of the jurisdiction by the learned Court below.

28. This Court is of the view that no error of jurisdiction or any other error which goes to the root of the matter, exists in the instant petition, therefore, calling for the intervention of this Court under Section 115 of the CPC.

29. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned order dated 5th August 2023, passed by Additional District Judge-03 (South) Saket Courts, New Delhi in Civil Suit bearing No. CS DJ No. 649 of 2022.

30. For all the aforesaid reasons, no merit is found in the instant revision petition and the same is accordingly dismissed, along with the pending



applications, if any.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 14, 2023
gs/db/ryp

Click here to check corrigendum, if any