



2023:DHC:6980



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 15th September, 2023**
+ C.R.P. 255/2023, CM APPL No. 47748/2023 & 47749/2023
M VIJAY KUMARAN Petitioner

Through: Mr. B.P. Shukla, Advocate.

versus

AJEET PRASAD AGGARWAL & ORS. Respondents

Through: Ms. Shobhana Takiar, Standing
Counsel with Mr. Kuljeet Singh,
Advocate for DDA.
Mr. Puneet Yadav, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed on behalf of the petitioner under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), seeking the following reliefs:

"A. Pass appropriate order thereby call for the record of Suit No. CS SCJ 41 /2016 52028/16 titled as "AJEET PRASAD AGGARWAL VERSUS VIJAY KUMAR AND ORS" Pending Before The Court of Ms. Paridhi Sharma, Ld. JSCC-cum-Addl. SCJ-GJ, South-East District, Saket Courts, New Delhi;

B. Pass appropriate order thereby setting aside the impugned order dated 01.07.2023 passed by Ms Shriya Agarwal, LD, JSCC cum ASCJ cum GJ, South-East

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 26.09.2023
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*District, Saket Courts, New Delhi in Suit No. CS SCJ 41/2016 52028/16 and allow the Application under order VII rule 11 of CPC of the revisionist;
C. Any other relief which deemed fit and proper may also be granted in favour of the revisionist and against the respondent.”*

2. The brief fact of the matter are discussed below:
 - a) The revisionist/petitioner is the owner of property at ‘Flat No. F-252, (duplex) Sarita Vihar, New Delhi- 110076’. The respondent no. 1/plaintiff is residing at Flat No. F-251, ground floor, Sarita Vihar, New Delhi- 110076. The respondent no. 1/plaintiff had filed a Civil Suit bearing no. CS SCJ 41/2016, for perpetual injunction and mandatory injunction against the petitioner/defendant before the Saket District Court, Delhi.
 - b) In the above said suit, the petitioner preferred an application under Order VII Rule 11 of CPC on the ground that the plaint does not disclose any cause of action. The learned Trial Court vide its order dated 1st July 2023 dismissed the said application of the petitioner.
 - c) Being aggrieved by the impugned order dated 1st July 2023, the petitioner has filed the present petition.
3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court passed the impugned order without considering the facts and circumstances as well as the oral submissions made by the petitioner.
4. It is contended by the petitioner that the learned Trial Court has failed



to appreciate that there is no violation of any civil right of the respondent and hence, there is no basis of filing the said suit.

5. It is vehemently argued by the petitioner that the learned Trial Court has failed to appreciate that there is no hindrance caused by the petitioner in the peaceful occupation and enjoyment of the respondent in his property, therefore, the suit does not disclose any cause of action.

6. It is vehemently argued that the plaintiff has no *locus standi* to file the suit in question against the revisionist/petitioner since he has not been able to explain his *locus standi*. The said contention has not been dealt by the learned Court below properly while rejecting the application under Order VII Rule 11 of the CPC.

7. It is submitted that the impugned order is unjustified, unwarranted and contrary to law and has been passed without understanding the intent and objective of the laws, Acts and facts, and therefore, is liable to be set aside.

8. *Per contra*, the learned counsel appearing for the respondent vehemently opposed the submissions made on behalf of the petitioners and submitted that the instant revision petition is nothing but grave abuse of the process of law. The same is liable to be dismissed, being bereft of any merits.

9. It is submitted that the learned Trial Court, passed the impugned order dated 1st July 2023 after considering the entire facts and applicable law in the instant matter. It is also submitted that the impugned order enunciates detailed reasoning whilst deciding the application under Order VII Rule 11 of the CPC, filed by the plaintiff and there is no illegality or error committed



by the learned Trial Court.

10. Learned counsel appearing for the respondent further submitted that the learned Trial Court, after perusing the averments made in the plaint as well as the documents filed along with the plaint reached to the conclusion that there is no case made out for setting aside the suit at the stage of deciding the application under Order VII Rule 11 of the CPC and accordingly, passed the impugned order.

11. It is submitted that there is no such error in the impugned order which warrants interference by this Court and as such the instant petition being devoid of merit is liable to be dismissed and the impugned order be upheld.

12. Heard the learned counsel appearing for the parties and perused the record, including the impugned order dated 1st July 2023 as well as the other averments made in the instant writ petition.

13. The petitioner before this Court has filed the instant petition assailing the impugned order dated 1st July 2023 passed by the learned Trial Court in his application filed under Order VII Rule 11 of the CPC.

14. It is a settled principle of law that at the time of considering an application under Order VII Rule 11 of the CPC, the trial Court adjudicating upon the suit need not conduct a roving inquiry into the facts and merits of the case, but has to limit itself to the consideration laid down under the provision itself. The law regarding this position stands settled by way of catena of judgments passed by the Hon'ble Supreme Court and High Courts..

15. 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.

16. 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 and 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.”

17. 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 there under are the averments in the plaint. Order VII Rule 11 of the CPC establishes a remedy that is made available to a defendant to challenge the maintainability of the suit itself, irrespective of the defendant's right to contest the suit on merits.

18. 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 upon 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.

19. 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.

20. The instant petition is filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. 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.

21. 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.

22. 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.

23. The relevant paragraphs of the impugned order dated 1st July 2023 has been reproduced herein below:

"5. Vide order dated 20.02.2023, with the said fresh status report being filed and upon a specific issue being raised by defendant no.1 in the course of arguments on the pending application, the maintainability of the suit was questioned and the following preliminary issue was framed:

*i. Whether the suit instituted in the present form is maintainable?
OPP*

6. The defendant no .1 had also filed an application under order VII Rule 11 CPC with prayer for rejection of the plaint on the ground that the entire case of the plaintiff was based on pure sentimental hurt, which did not qualify as /give rise to a tenable cause of action. It is further agitated in the application that the suit property had been constructed in accordance with the lay out plan and the WC/bathroom was duly permissible as per the policy. The said we is a "wall mounted structure and the outlet of the same was through the wall of the defendant, with no adverse effect accruing because of usage to the property of the plaintiff. It is claimed that the said facts have been concealed by the plaintiff in order to file the present. It is further highlighted in the application that the defendant no.1 had applied for regularization of the construction and a special Protection Certificate had also been issued in the interregnum in his favour. The property was booked by MCD after lapse of 12 years of its construction, asserting that even otherwise there was no new construction being done in the property as claimed.

7. In the course of the arguments on the said application it has also been again highlighted that the said additional construction/ coverage too now stands regularized in lieu of the compounding fee already paid.



8 . Submissions heard on the preliminary issue and the application under order VI I Rule 11 CPC. Record has been carefully perused.

9 . The issue as to whether the suit is maintainable in the form instituted had come up in the course of proceedings and the arguments being advances by the parties , in view of the nature of relief sought here in as being one simplicitor for injunction . Although the defendant no. 1 has disputed the claims of the plaintiff with respect to fresh construction in the suit property, the plaintiff 's case is based on the assertion to the contrary with respect to additional coverage, which admittedly was previously booked by MCD under the DMC Act for violation.

10. the plaintiff in the course of arguments on the preliminary issue (in favour of the maintainability of the suit) has based reliance upon the judgments passed by the Hon'ble High Court of Judicature of Bombay(Panaji Bench) [2016 (3) ALL MR 232] titled ' Sh Narayan Waingankar & Ors Vs Archidiocese of Goa & Daman Pacopatrioral Religious Institution', to assert that the suit simplicitor for the relief for injunction is maintainable in the facts of the instant case, without any requirement for making a plea qua declaration of rights, since it is merely an interference with the plaintiff's lawful possession/ right of peaceful enjoyment of his own property, which is being alleged in the present case. There are no conflicting claims qua title vis a vis any portion in the suit property. It is inherent in the prayer for injunction for demolition of the constructed portion/ suit property, that in the event, the same is found to be / declared illegal, the necessary relief by way of orders for demolition ought to follow. Thus, as so observed in the aforesaid judgement Sh Narayan Waingankar (supra)by the Hon'ble High Court of Judicature at Bombay, that the plaintiff having a clear right/ title possession suing simplicitor for protecting the right of peaceful enjoyment of his own property, for reliefs in the nature of injunction, 'should not be driven to a costlier and more cumbersome remedy for a suit for declaration, merely because some meddler, vexatiously or wrongfully makes a claim or is trying to encroach'.



Even though in the present case there is no such claim of encroachment over the plaintiff's property by the defendant, the cause of action is observed to be premised in essentially the allegation of an illegal construction in the defendant's property affecting the rights of peaceful, unfettered, unhindered enjoyment of his own property by the plaintiff. Therefore, at this stage, nothing adverse is observed rendering the maintainability of the suit questionable and the preliminary issue is accordingly so decided.

11. as regards the pleas is taken in the application under order VII Rule 11 CPC, the same raise effectively a contest over the factual claims in the plaint, on the lines taken in defence in the written statement. The law on the provision under order VII Rule 11 CPC is well settled, wherein, for consideration on the grounds for rejection of plaint, it is only the averments in the plaint that can be looked into and no further. Accordingly, application under order VII Rule 11 CPC is found to be not maintainable and stands dismissed.

It is noticed that there is an application also pending under order XII Rule 6 CPC. Arguments on the said application be advanced on the NDOH i.e., 14.07.2023 at 02:00PM."

24. Teresely, the respondent no. 1 filed a suit for perpetual and mandatory injunction seeking decree of perpetual injunction, by way of restraining petitioner from constructing a washroom above the kitchen of the respondent no.1. The petitioner before the learned Court below by way of his application seeking rejection of the plaint had averred that the civil suit filed by the defendant no.1 lacks cause of action. Since the suit property was constructed in accordance with the lay out plan and the bathroom was duly permissible as per the policy and the petitioner had applied for regularization of the construction and in the *interregnum* a special Protection Certificate



had also been issued in his favour.

25. The Court below held that there is no claim by the respondent no. 1 for encroachment of the said property; however, there is an allegation of illegal construction in the petitioner's property which is affecting the right of peaceful enjoyment of respondent no.1's own property. The learned Trial Court further held that the factual claims regarding illegal construction raised by the respondent no. 1 is triable issues which requires adjudication by the Court below and therefore, dismissed the application seeking rejection of the plaint. Therefore, the Trial Court whilst passing the impugned order held that upon reading of the averments made in the plaint the cause of action accrues from the alleged illegal construction in the petitioner's property affecting the right of peaceful occupation and enjoyment by the respondent no. 1.

26. This Court is of the view that the plaintiff had also made specific averments in paragraph 4, 5 and 6 of the plaint about the construction of a latrine above the kitchen. The said averments have rightly been taken into consideration by the learned Court below while deciding the application filed under Order VII Rule 11 CPC and held that the Trial Court has to adjudicate upon the issue whether the alleged illegal construction by the petitioner is causing hindrance to the respondent no. 1 in enjoying its property. Upon examining the same, this Court is of the view that the averments of the plaintiff, discloses a cause of action for instituting the above said suit.

27. In view of the above said discussions, it is held that the learned Trial



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Court had correctly rejected the application under Order VII Rule 11 CPC vide the impugned order dated 1st July, 2023. The petitioner has failed out to make out any case for interference by this Court in revisional jurisdiction as there is no illegality with the jurisdiction exercised by the learned Court below. Therefore, the present revision being devoid of any merit is liable to be dismissed.

28. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned order dated 1st July 2023 passed by Ms. Paridhi Sharma, Senior Civil Judge, Saket District Court Delhi.

29. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 15, 2023

pa/db/ryp

Click here to check corrigendum, if any