



2023:DHC:7319



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

% **Date of order: 21st September, 2023**

+ C.R.P. 262/2023 & CM APPL. 49104/2023 & CM APPL. 49105/2023
DEEP CHAND KOLI Petitioner

Through: Mr. Sahil Garg, Mr. Ankit Gupta and
Mr. Abhinav Jain, Advocates

versus

NET RAM Respondent

Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs:

“A. Allow the present Petition and thereby, set-aside the Impugned Order dated 05.07.2023 passed by the Ld. ADJ, South-West District, Dwarka District Courts Complex in C.S. No. 649 of 2020; and

B. All the present Petition and thereby direct rejection of the Complaint under Order VII Rule, 11 CPC 1908; and

C. Pass any other order/ direction which this Hon'ble Court may deem fit in the present facts and circumstances, and in the interest of justice.”



2. Brief Facts of the case are reproduced herein below:

- a) Respondent/Plaintiff and Respondent are real brothers.
- b) The plaintiff and the respondent owned the property i.e., property bearing No. RZF-350M, Raj Nagar- II, Palam Colony, New Delhi - 110077, admeasuring 250 sq. yds. (hereinafter “suit property”)
- c) On the basis of the plaint filed by the respondent/plaintiff, it has been alleged that the suit property in contention was purchased by their father in the year 1973 from his own funds and resources, but it was registered in the name of the respondent/plaintiff.
- d) During the lifetime of their father in the year 1993-94, the suit property was orally partitioned between the brothers in equal share i.e., 122.5 Sq, Yards each. Petitioner/respondent executed GPA(General Power of Attorney) on 13th October 2010, alongwith registered will in respect of the suit property .The registered GPA and Will were later admittedly revoked by the respondent/plaintiff by registered cancellation deeds, both dated 01st November 2014.
- e) Subsequently, the respondent filed a civil suit before the Additional District Judge,South-West District, Dwarka Districts Courts Complex on 17th December 2020, thereby claiming a decree of declaration, possession, permanent and mandatory injunction with respect to suit property.



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- f) Respondent/plaintiff on 1st February 2021, filed an application under Order VII Rule 11, CPC seeking rejection of the plaint as the claims and contentions raised in the aforementioned suit were ex-facie false and barred in law.
- g) On 9th August 2021, respondent moved an application under Order VI Rule 17, CPC for amendment of pleadings. On 5th July 2023, learned trial Court passed an order (hereinafter “impugned order”) whereby the respondent’s application under Order VI Rule 17, CPC was allowed and amended plaint was taken on record. However, the petitioner/respondent’s application under Order VII Rule 11, CPC was dismissed.
- h) Being aggrieved by the same, the petitioner/respondent has approached this Court challenging the impugned order under its revisional jurisdiction.
3. Learned counsel appearing on behalf of the petitioner submitted that the learned Court below has committed a grave injustice and the reliefs claimed by the respondent herein were directly in the teeth of Section 4 of the Benami Transactions (Prohibition) Act, 1988, wherein it is categorically prohibited to enforce a right in a property owned by a person claiming to be the real owner against the person in whose name the property is held.
4. It is submitted that the learned Trial Court failed to appreciate the already settled position of law that a person from whom the purchaser may have received the purchase consideration, does not acquire any right in the property which is only of the person in whose name the property is



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registered and further placed reliance on case titled ***Chander Mohan Sharma v. Jagdish Prasad Sharma***, 2016 SCC OnLine Del 984.

5. It is submitted that the learned Trial Court failed to appreciate that the suit property was duly registered in the name of the petitioner *vide* sale deed dated 23rd October 1973, therefore the learned Trial Court could have sustained a plea of oral partition of the suit property by a third party (father of the parties).

6. It is further submitted that the reliefs claimed in the suit are barred by the provisions under Section 201 and Section 202 of the Indian Contract Act, 1872. It is also submitted that Court cannot grant a relief which is barred in law and ought to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter “CPC”).

7. It is submitted that the suit is barred for misjoinder of causes of action, therefore directly in the teeth of Order II Rule 2 of the CPC.

8. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner, that the present petition may be allowed, and the reliefs may be granted as prayed.

9. Heard the learned counsel appearing on behalf of the petitioner and perused the record.

10. In order to adjudicate the instant petition, it is imperative to analyse the impugned order dated 5th July 2023. The relevant paragraphs of the same are reproduced herein:

*“I have perused the registered GPA dated 13.10.2010
and the registered Will dated 13.10.2010. The said*



documents are stated to have been cancelled by the defendant No. 1 vide registered cancellation dated 01.11.2014. The argument of ld counsel for defendant No. 1 that the suit is without any cause of action as the the very document i.e. the registered GPA and the Will dated 13.10.2010 executed in favour of the plaintiff has been revoked/ cancelled by defendant No.1 vide registered documents dated 01.11.2014, is misconceived and not tenable. It is no more res integra that the cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. The expression means every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the court. Cause of action is a bundle of facts which give cause to enforce the legal injury for redress in a Court of law. At the same time, it is well settled law that while deciding the application under Order VII Rule 11 CPC, the facts as stated in the plaint are germane and the Court cannot consider the defence of the defendant. The plaintiff has put forth certain circumstances with respect to oral partition and the consequent execution of the registered GPA and Will in his favour by defendant No. 1. Whether there was any oral partition with respect to the suit property; Whether the registered GPA and Will dated 13.10.2010 was executed by defendant No. 1 in favour of plaintiff in compliance of the said oral partition; Whether the defendant No. 1 unilaterally had the right to cancel the registered GPA and Will dated 13.10.2010; Whether any right, tile or interest was created in favour of the plaintiff by virtue of registered GPA and Will dated 13.10.2010 is a matter of evidence. The suit cannot be said to be barred under Section 201,



202 and 204 of The Contract Act as argued by Ld counsel for defendant No. 1. The application of the defendant No. 1 under Order VII Rule 11 CPC being devoid of any merits is dismissed.”

11. A bare perusal of the impugned order reveals that the learned Trial Court, while passing the impugned order dated 5th July 2023 observed that the petitioner's contention that the suit is without any cause of action as the registered will and GPA is executed in favour of the respondent have been revoked, is not tenable.

12. It was observed by the learned Trial Court that cause of action is a bundle of facts and is to be ascertained by analysing all evidence produced. Further, the issues raised *vide* the plaint, are a matter of evidence, and cannot be decided by the Court solely on the basis of the averments made in the plaint, however an application under Order VII Rule 11 of the CPC, does not allow the Court to go beyond the averments made in the plaint.

13. At this juncture, this Court deems it fit to delve into the aspect of law governing the extent and scope of the relevant provisions mentioned hereinabove.

14. The provision under Order VII Rule 11 of the CPC, provides for rejection of a plaint. The scope of judicial inquiry in an application under Order VII Rule 11 of the CPC, is very limited to examining the statement in the plaint. Under Order VII Rule 11 of the CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief



claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the court, and where the suit appears from the statement in the plaint to be barred by any law. The said rejection of a plaint in exercise of the powers under Order VII Rule 11 of the CPC, would be on consideration of the principles laid down under the said provision and the judgements of the Hon'ble Supreme Court.

15. The Hon'ble Supreme Court in the case of ***Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661***, dealt with the aspect of analysing evidence in order to invoke Order VII Rule 11 of the CPC, and held as follows:

"21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision."



16. In the aforesaid mentioned judgment, the Hon'ble Supreme Court observed that in the event an application under Order VII Rule 11 of the CPC, is made, the Court will have limited power with regards to evidence submitted by the parties therein. Any issue that may arise on merits is beyond the jurisdiction of the Court in such an application.

17. Reverting to the facts of the instant petition and bearing in mind the settled law governing Order VII Rule 11, the petitioner in his Order VII Rule 11 applications has contended before the learned Trial Court that the plaint of the respondent is liable to be dismissed on the ground that it is bad for misjoinder of parties and causes action. It is contended by the petitioner that the suit property is self-earned and the respondent has no right, interest or title over it. It is contended that the registered GPA and Will relied upon by the respondent have been cancelled by the petitioner in 2014; *vide* cancellation deed dated 1st November 2014. It is also contended that the GPA was executed for the limited purpose of taking care of the property and did not in any manner transfer interest or title in favour of the respondent. It is further contended that there was never any oral partition between the parties during the lifetime of their father and the said plea is not supported by any documents.

18. It has been averred in the plaint that the suit property was purchased by their father through his own funds, but was registered in the name of the petitioner out of love and affection; the same has been denied by the petitioner, on the ground that the petitioner is the real owner. It is also



averred that by virtue of an oral partition, the suit property has been divided in equal share between the petitioner and respondent during the lifetime of their father and following the oral partition, the petitioner executed the registered GPA and Will dated 13th October 2010, with respect to equal share in the suit property.

19. The respondent in his plaint has put forward certain situations with respect to oral partition and the subsequent execution of the registered GPA and Will in his favour by the petitioner. The issues that come before the Courts for consideration can be summed up as follows:

- i) The mere existence of the oral partition with respect to the suit property.
- ii) Whether the petitioner executed the registered GPA and Will in favour of the respondent.
- iii) Whether there was any right or title created in favour of the respondent by virtue of the registered Will and GPA.

20. The aforementioned issues are matters of evidence and require the Court to ascertain the same by going beyond the averments made in the plaint in order to adjudicate on the present case.

21. Since this Court has discussed the facts of the instant case in the foregoing paragraphs, it will only be prudent to further discuss the scope of the Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.



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22. In view of the above discussions of facts and law it is, hereby, held that there is no error on the part of the learned Trial Court in dismissing the application under Order VII Rule 11 of the CPC, filed by the petitioner. The learned Trial Court has correctly passed the impugned order by stating that the issues raised by the petitioner are subject matter which requires the parties to lead evidence to prove whether the suit is bad for misjoinder of parties and cause of action. The same are prudent to be adjudicated upon, at the time of deciding the matter on merits and not under an application for rejection of the plaint.

23. Since the petitioner has failed to make his case seeking revision, and in the absence of any infirmity in the exercise of jurisdiction by the learned Court below. The impugned order dated 5th July 2023 passed in suit bearing no. CS DJ ADJ 649/2020 is hereby upheld.

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

25. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 21, 2023

gs/ds/db

Click here to check corrigendum, if any