



2023:DHC:7240



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

% **Date of order : 22nd September, 2023**

+ **C.R.P. 264/2023 and CM APPL. Nos. 49274/2023, 49275/2023 and 49276/2023**

RAM KISHAN SINGH

..... Petitioner

Through: **Mr.Jaideep Singh, (through VC) with
Mr.Brajesh Kumar Sharma,
Advocates**

versus

BALA CHOUDHARY & ORS.

..... Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present revision petition under Section 115 of the Code of Civil Procedure, 1908(hereinafter referred to as CPC), has been filed by the petitioner seeking the following reliefs:

- "1. That the present revision petition be accepted by this Hon'ble Court;*
- 2. That the impugned order dated 20.05.2023 passed by the Ld. Trial Court in the case titled as "Bala Choudhary vs Ram Kishan Singh &Ors" CS DJ No. 907 of 2018 before the Saket District Courts, New Delhi be set aside by this Hon'ble Court;*
- 3. That the Hon'ble Court may pass appropriate Orders allowing the application under Order 7 Rule 11 CPC filed by the petitioner before the trial court and the Complaint be 'rejected';*

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4. That any other further orders be passed in the interest of justice and fair play be passed in favor of the Petitioner and against the Respondent No.1.”

2. The petitioner (defendant no. 1 before the Trial Court) is the father of the respondent no. 1 (plaintiff before the Trial Court) and rest of the parties to the present petition are family members.

3. The respondent no.1 had filed a suit for declaration, partition, possession, rendition of accounts and permanent & mandatory injunction for two suit properties situated in Delhi. In the said suit, the respondent had alleged disproportionate division of the said suit properties, thereby leading to depriving her rightful share in the said properties.

4. Thereafter, the petitioner filed an application under Order VII Rule 11 of the CPC for rejection of the plaint on the grounds of maintainability, however, the said application was rejected by the learned Trial Court *vide* impugned order dated 20th May, 2023.

5. Aggrieved by the same, the petitioner has filed the present revision petition.

6. The learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court failed to appreciate the fact that the petitioner, being son of the late grandfather of the respondent no. 1 is the sole legal heir and therefore, owner of the suit property.

7. It is submitted that the Trial Court failed to appreciate that after death of the father of the petitioner (grandfather of the respondent no. 1), the petitioner shall be regarded as the owner of the suit property as the death of



the petitioner's father happened in 1975, much after passing of the Hindu Succession Act, 1956.

8. It is submitted that the learned Trial Court erred in appreciating that the plaint filed by the respondent no. 1 fails to establish any cause of action arising in her favor and therefore, the suit is not maintainable.

9. It is also submitted that the learned Trial Court failed to appreciate the settled principle of law where false, vague and vexatious pleadings are liable to be set aside in order to prevent the frivolous litigation.

10. It is further submitted that the said suit properties are self-acquired properties, and therefore, the respondent no. 1 cannot claim right over such properties till the petitioner is alive.

11. In view of the above arguments, learned counsel for the petitioner prays that the petition be allowed and the reliefs be granted as prayed.

12. Heard the learned counsel for the petitioner and perused the records.

13. In this revision petition, the order passed by the learned Trial Court rejecting the applications filed under Order VII Rule 11 of the CPC is under challenge. At the outset, it becomes imperative to discuss the scope of revision under Section 115 of the CPC. It is well settled that scope of revision is very limited and the same was enacted with a view to enable the Courts to correct certain classes of errors of jurisdiction committed by the Subordinate Courts. The said provision is reproduced herein:

“115. Revision-

[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High



Court and in which no appeal lies thereto, and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

[Explanation.—In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.”]

14. On bare perusal of the above provision, it is clear that the High Court can only interfere with the orders of the Subordinate Court if the Court has committed illegality or material irregularity in exercise of its jurisdiction. It is imperative to note that under the revision powers, this Court cannot delve into the findings on the facts by the Subordinate Court and can only interfere



if any infirmities are found with the exercise of jurisdiction of the Court and not when the courts erroneously decide the cases.

15. The primary object of the revision powers conferred to the High Court is to prevent subordinate courts from acting arbitrarily, capriciously and illegally while they exercise their jurisdiction. The objective and scope of revisional powers under Section 115 of the CPC has been discussed by the courts in a catena of judgments. In ***Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi, 1959 Supp (1) SCR 733***, the Hon'ble Supreme Court delved into the aspect of limited revisional powers given to the High Courts under Section 115 of the Code and held:

“12. Section 115 of the Civil Procedure Code, empowers the High Court, in cases where no appeal lies, to satisfy itself on three matters : (a) that the order made by the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise its jurisdiction; (c) that in exercising the jurisdiction the court has not acted illegally, that is, in breach of some provision of law or with material irregularity that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. Per Sir John Beaumont in Venkatagiri Ayyangar v. Hindu Religious Endowment Board, Madras [(1949) LR 76 IA 67, 73] .Therefore if an erroneous decision of a subordinate court resulted in its exercising jurisdiction not vested in it by law or failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court is made out. In Joy Chand Lal Babu v. Kamalaksha Chaudhury [(1949) LR 76 IA 131] the subordinate court gave an erroneous decision that the loan was a commercial loan and therefore refused to exercise jurisdiction



vested in it by law and the Privy Council held that it was open to the High Court to interfere in revision under Section 115. Sir John Beaumont said at p. 142:

“There have been a very large number of decisions of Indian High Courts on Section 115 to many of which Their Lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under sub-section (c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law or failing to exercise a jurisdiction so vested a case for revision arises under sub-section (a) or sub-section (b) and sub-section (c) can be ignored. The cases of Babu Ram v. Munnalal, (1927) ILR 49. Section 454 and Hari Bhikaji v. NaroVishvanath, (1885) ILR 9 B. 432 may be mentioned as cases in which a subordinate court by its own erroneous decision (erroneous that is, in view of the High Court), in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess; and the High Court held, wrongly Their Lordships think, that it had no power to interfere in revision to prevent such a result. In the present case Their Lordships are of the opinion that the High Court, on the view which it took that the loan was not a commercial loan had power to interfere in revision under sub-section (b) of Section 115.”

In KeshardeoChamria v. Radha KissenChamria [(1952) 2 SCC 329 : (1953) SCR 136] both these judgments of the Privy Council as also the previous judgments in Rajah Amir Hassan Khan v. Sheo Baksh Singh [(1884) LR II IA 237] and Balakrishna Udayar v. Vasudeva Aiyar [(1917) LR 44 IA 261] were reviewed and it was held that Section 115 Civil Procedure Code applies to matters of jurisdiction alone, the irregular



exercise or non-exercise of it or the illegal assumption of it. Thus if a subordinate court had jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the ultimate decision, then the High Court has no power to interfere. But if on the other hand it decides a jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested then the power of interference under Section 115 CPC, becomes operative.”

13. *The appellant also relied on Rai Brij Raj Krishna v. S.K. Shaw and Bros. [1951 SCC 102 : (1951) SCR 145] where this Court quoted with approval the observations of Lord Esher in Queen v. Commissioner for Special Purposes of the Income Tax [(1888) 21 QBD 313, 319] and Colonial Bank of Australia v. Willan [(1874) LR 5 PC 417, 443] where Sir James Colville said:*

“Accordingly the authorities ... establish that an adjudication by a Judge having jurisdiction over the subject-matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein and that the Court of Queen's Bench will not on certiorari quash such an adjudication on the ground that any such fact, however essential has been erroneously found.”

But these observations can have no application to the judgment of the Additional Civil Judge whose jurisdiction in the present case is to be determined by the provisions of Section 5(4) of the Act. And the power of the High Court to correct questions of jurisdiction is to be found within the four corners of Section 115 CPC. If there is an error which falls within this section the High Court will have the power to interfere, not otherwise.

14. *The only question to be decided in the instant case is as to whether the High Court had correctly interfered under Section 115 of the Civil Procedure Code, with the order of the Civil Judge. As we have held above, at the instance of the landlord the suit was only maintainable if it was based on the*



inadequacy of the reasonable annual rent and for that purpose the necessary jurisdictional fact to be found was the date of the construction of the accommodation and if the Court wrongly decided that fact and thereby conferred jurisdiction upon itself which it did not possess, it exercised jurisdiction not vested in it and the matter fell within the rule laid down by the Privy Council in Joy ChandlalBabu v. Kamalaksha Chaudhury [(1949) LR 76 IA 131] . The High Court had the power to interfere and once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided. The High Court held that the Civil Judge had wrongly decided that the construction was of a date after June 30, 1946 and therefore fell within Section 3-A.”

16. In ***Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur***, (2009) 5 SCC 162, the Hon’ble Supreme Court decided the issue related to the jurisdiction of a Court in a civil revision application and held that the jurisdictional questions may not arise only when the Courts act wholly without jurisdiction, but can also arise where other jurisdictional errors are committed by the Subordinate Court. The relevant paragraph is reproduced herein:

“43. A civil revision application although must necessarily having regard to the terminologies used in Section 115 of the Code of Civil Procedure involve the question of jurisdiction, the question which would arise is as to what are the jurisdictional questions. A jurisdictional question may arise not only when a court acts wholly without jurisdiction but also in a case where jurisdictional errors are committed while exercising jurisdiction. There are various facets of “jurisdictional errors”. Taking into consideration any irrelevant fact or non-



consideration of a relevant fact would involve jurisdictional issue.”

17. Hence, from the foregoing discussion, it is clear that the said provision has a limited scope and the Courts can only decide the revision application if the question involves the jurisdiction conferred to the Subordinate Courts.

18. In the instant revision petition, the petitioner has raised the issue of non-arisal of cause of action in the plaint filed by the respondent no.1. Therefore, it is imperative to discuss the said aspect related to a suit.

19. As per settled principle of law, in a suit, a party needs to establish a cause of action in his favor for successful admission and adjudication of the dispute. The term cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which, taken with the law applicable to them gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise.

20. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted



above, 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.

21. Hence, the only consideration before this Court under revision is to determine whether the impugned order needs any interference or not. Therefore, it is pertinent to peruse the impugned order and determine its legality. The relevant part of the said order is reproduced herein:

“5. It is settled law that for the purpose of deciding an application under Order VII Rule 11 CPC, it is only the plaint and the annexed documents that have to be looked into and the averments in the plaint have to be taken to the gospel truth. Record shows that plaintiff has filed the present suit for Declaration, Partition, Possession, Rendition of Accounts and Permanent & Mandatory Injunction against the defendants. It is stated in the plaint that grandfather of plaintiff purchased property bearing no.118, ShahpurJat, New Delhi by way of registered Sale Deed on 16.05.1950 and after his demise suit property no.1 devolved upon his LRs i.e. plaintiff and defendant no.2 to 5 herein. It is further stated that grandfather of plaintiff was also owner and in possession of a piece of land. Against the acquisition of said ancestral land, one plot bearing no.J- 174, Saket, New Delhi was allotted to defendant no.1 on subsidized/ nominal rates on compensatory grounds on registered Lease Deed dated 11.03.1983. It is further stated that out of the earnings from the aforesaid properties defendant no.1 further acquired various immovable and movable properties as mentioned in para 6 of the plaint.

6. It is settled law that plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to



read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. It is a matter of trial whether suit properties are ancestral properties or self acquired properties of defendant no.1.”

22. On perusal of the above paragraphs of the impugned order it is clear that the learned Trial Court had referred to the plaint filed by the respondent no. 1, and held that the question of whether the suit properties are ancestral or not is a matter of trial which cannot be decided in an application filed under Order 7 Rule 11 thereby rejecting the application on the grounds that the apprehension of the suit getting rejected at a later stage cannot be a ground to dismiss the suit in an application filed under Order VII Rule 11 of the CPC.

23. As per paragraph no. 4 and 5 of the plaint, the properties belonging to the father of the petitioner was vested out to their LRs i.e. the petitioner and the other family members excluding the respondent no. 1. Furthermore, the



plaint filed by the respondent also makes out a case where the land provided against the acquisition of the ancestral land is solely given to the petitioner and not divided among the other members, thereby raising a cause of action to approach the Court.

24. The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

25. It is well settled that the Court, while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Therefore, the rejection of plaint on the ground of non-arisal of the cause of action should be established, otherwise, the suit cannot be rejected.

26. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order VII Rule 11 of the CPC, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order VII Rule 11 of the CPC, no exception can be taken to the order.

27. Therefore, keeping in view the facts, circumstances, the arguments



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advanced as well as the contentions raised and also the scope of revision powers settled by law and reiterated by the Hon'ble Supreme Court, this Court is not inclined to allow the instant petition. There is no error in the impugned order, dated 20th May, 2023, that warrants interference by this Court in exercise of its revision powers under Section 115 of the CPC.

28. Accordingly, the instant petition stands dismissed.
29. Pending applications, if any, also stands dismissed.
30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 22, 2023
SV/AV/DB

Click here to check corrigendum, if any