



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

% **Date of order : 1 August, 2023**

+ **C.R.P. 174/2022**

MONIKA SINGH AND ANR Petitioners

Through: Mr. Kunal Khanna and Ms. Sonia Dhariwal, Advocates.

versus

SUDHA PRASAD Respondent

Through: Mr. Gagan Gandhi, Mr. Akshay Malik and Ms. Sonakshi Chaturvedi, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

"i. Pass an order to set-aside the impugned order dated 20/09/2022 passed by Shri Rajesh Kumar, ADJ-03, East, Karkardooma Court, Delhi in view of the application of petitioners/defendants to reject the plaint filed under order VII rule 11 (d) read with section 151 of CPC in civil suit bearing No. CS/2674/2016 titled as Sudha Prasad V/s Monika Singh & Anr.

ii. Pass an order to allow the application of the petitioners/defendants filed under order VII rule 11 (d) read with section 151 of CPC to reject the plaint of the respondent/plaintiff.

iii. Any other relief which this Hon'ble Court deems fit and



proper may also be granted in favour of the petitioners/defendants and against the respondent/plaintiff in the interest of justice.”

2. Learned Counsel appearing on behalf of the petitioners/defendants submitted that the respondent/plaintiff filed a suit for recovery of possession and damages bearing suit no. 2674/2016 under Section 6 of the Specific Relief Act, 1963 (hereinafter “the Act”) on 18th June 2008 before the ADJ-03, East Karkardooma Court, Delhi, pertaining to the plot/property admeasuring 1200 sq. yards forming part of khasra no. 389/26311/2 situated in village Chilla Saronda Banger, Delhi bearing no. B-1179 (new), old no. B-335, New Ashok Nagar, Delhi-110096 (hereinafter “Suit Property”).

3. It is submitted that in the said suit, the petitioners filed an application under Order VII Rule 11 (d) of the CPC seeking rejection of the plaint on the ground that the respondent is seeking the reliefs which are barred by law. The said application was dismissed by the Court below and hence, the petitioners are before this Court.

4. It is submitted that there is an error of law in passing the impugned order dated 20th September 2022, by the learned Trial Court as it has failed to appreciate that under the provisions of the law, two alternate and different remedies i.e. ‘*relief for decree of possession and damages under Section 6 of the Act*’ or in the alternative ‘*relief for decree of possession and damages based on title*’ cannot be clubbed or combined in one and the same suit.

5. It is submitted that the present revision petition has been filed challenging the impugned order dated 20th September 2022 passed in the civil suit whereby application of the petitioner under Order VII Rule 11 (d) of the CPC has been dismissed.



6. It is submitted that on one hand the respondent is seeking a relief for recovery of possession of a property under Section 6 of the Act, wherein, the reliefs sought are limited to the question that whether the plaintiff who was formerly in possession was dispossessed subsequently without his consent. Whereas, on the other hand, a similar relief is being sought on the basis of title of the Suit Property as well. The same is in complete contravention of the ingredients of Section 6 of the Act. Hence, it is submitted that in such a Suit, the Court cannot try the question of title and similarly, a claim for damages also cannot be clubbed or combined with a relief under Section 6 of the Act.

7. It is submitted that the learned Trial Court wrongly adjudicated upon the application filed by the petitioners because it has failed to consider that while deciding an application under Order VII Rule 11 of the CPC, the material which has to be considered are the averments or statement mentioned in the plaint along with the documents annexed with the plaint, if required, while issues, evidence etc. of the Suit are not relevant. Further, the application under Order VII Rule 11 of the CPC can be considered at any stage of the Suit.

8. It is also submitted that the learned Trial Court failed to read the plaint as whole and passed the impugned order wrongly by not considering that as per the settled law, the reliefs under Section 6 of the Act cannot be decided on the basis of title of the Suit Property. It is a settled proposition of law that while deciding the application under Order VII Rule 11 of the CPC, the Court has to primarily look into the plaint only, and by a plain and simple reading of the plaint filed by the respondent, it is evident that the respondent is seeking two alternate reliefs in a single Suit.



9. Learned counsel has placed reliance upon the judgment of ***Ramanlal Ambalal Patel v. Hina Industries, (1993) 1 GLR 820*** wherein, the Gujarat High Court has held that there is no scope for seeking two different remedies in a same litigation. Further, reliance has been placed upon the judgment in ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives & Ors., (2020) 7 SCC 366***, wherein, the Hon'ble Supreme Court, on the aspect of remedy available under Order VII Rule 11, has stated that the remedy under the said provision is an independent and special remedy whereby, the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence adduced, if it is satisfied that the Suit should be terminated on any of the grounds contained in this provision.

10. In view of the foregoing paragraphs, the learned counsel for the petitioners submitted that the instant petition may be allowed and the reliefs sought may be granted.

11. *Per contra*, learned counsel appearing on behalf of the respondent/plaintiff vehemently opposed the averments made by the petitioners and submitted that the present petition has been filed with the sole purpose of harassing the respondent. The present petition is nothing but an abuse of the process of law.

12. It is submitted that the petitioners, since the advent of the trial, have been trying to delay the proceedings as it was the third application for rejection of the plaint filed by the petitioners and consequently, all of such applications were dismissed.

13. Learned counsel during the course of arguments, while placing reliance on the judgment passed by the Hon'ble Supreme Court in ***Sajjan***



Singh v. Jasvir Kaur & Ors., Civil Appeal No. 4221/2023, dated 6th July 2023, submitted that the issue with regard to the reliefs being appropriate or not is a matter which ultimately has to be decided in the suit and the same ought not to be considered while deciding the application under Order VII Rule 11 of the CPC.

14. It is submitted that the learned Trial Court has delved into the merits of the application filed by the petitioners and conclusively held that the grounds raised by the petitioners for the dismissal of the Suit cannot be dealt with, in an application under Order VII Rule 11 of the CPC, as the same go into the merits of the Suit and require adducing of evidence. In addition, the Suit is at the stage of evidence and raising such grounds is frivolous in nature, hence, violating the process of law.

15. It is submitted that the learned Trial Court has correctly dismissed the application filed by the petitioners and this revision petition does not fall within the ambit of Section 115 of the CPC. It is further submitted that the learned Trial Court has not committed any illegality by irregular exercise or non-exercise of its jurisdiction in passing the impugned order and the same is not erroneous in law.

16. Hence, in view of the foregoing submissions, the respondent seeks that this Court dismiss this revision petition, thereby, upholding the impugned order.

17. Heard.

18. This Court has perused the material on record including the pleadings and judicial precedents cited.

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



Whether the petitioner's challenge against the impugned order of the learned Trial Court, dismissing the petitioner's application under Order VII Rule 11 of the CPC, is sustainable under the limited scope of Section 115 of the CPC?

20. The petitioners have preferred the instant revision petition against the order of the learned Additional District Judge in the Suit initiated by the respondent and is pending between the parties. The application filed by the petitioners under Order VII Rule 11 (d) of the CPC, was dismissed by way of the impugned order dated 20th September 2022. The learned Judge while passing the impugned order has explicitly stated that while deciding the Suit under Section 6 of the Act, issues relating to the title and ownership of the Suit Property, are irrelevant and immaterial. It was also observed by the learned Trial Court that the contention of the petitioners regarding the lack of supporting documents annexed by the respondent showing her physical possession, is a ground that relates to the merits of the Suit and thus, cannot be examined at the time of deciding the application under Order VII Rule 11 of the CPC. The relevant paragraphs of the impugned order are reproduced below:

"11. In the present case, the trial is going on, plaintiffs evidence has been closed and defendants have yet to complete their evidence. This court has yet to decide the issues after completion of defendant's evidence and hearing final arguments. Hence, in view of above stated Amar Singh (supra) judgment, this court is of the view that as the suit is filed u/s 6 of Specific Relief Act 1963, other reliefs claimed by the plaintiff regarding possession of suit property on the basis of title and damages based on unlawfully occupation are immaterial and are not to be considered while deciding the present suit. Ld. Predecessor of this court while deciding the application on behalf of defendant for framing of additional issues vide order



dated 28.04.2018 has already observed that issue no.3 regarding the ownership qua the suit property has been framed, however, as the present suit is filed u/s 6 of Specific Relief Act the question of title is immaterial. Hence, this court does not find any merit in the contention of the defendants that suit is liable to be rejected u/o 7 rule 11 CPC.

The defendant has also contended that plaintiff is not the owner of suit property on basis of documents i.e. sale deed dated 08.06.1981, and other documents namely agreement to sale, Will Deed, receipts etc. all executed on 15.04.2004. As far as ground regarding ownership is concerned, it is pertinent to mention here that the plaintiff has filed the present suit u/s 6 of Specific Relief Act and in view of above discussed case law it is clear that while deciding suit u/s 6 of Specific Relief Act issue regarding title and ownership of the suit property is irrelevant and immaterial. Defendant has also contended that plaintiff did not file even a single document showing her physical possession over the suit property within six months earlier (i.e. from 19.12.2007 to 18.06.2008) from the date of filing the present suit and she filed the present suit u/s 6 of the Specific Relief Act 1963. Defendants further contends that suit property has been acquired by government authorities and plaintiff has got the compensation amount from concerned authorities. This court is of the view that these grounds mentioned in the application u/o 7 rule 11 CPC for rejection of the present plaint relates to merits of the case and it is settled law by catena of judgments of Hon'ble Supreme Court of India that merits of the matter shall not be examined at the time of deciding the application u/o 7 rule 11 CPC.

10. From the aforesaid discussion, it is clear that there are no ground for rejection of the plaint. Hence, the application u/o 7 Rule 11 CPC is hereby dismissed.”

21. While adjudicating upon the issue of rejection of the plaint with regard to the respondent seeking alternate reliefs under Section 6 of the Act, the learned Trial Court has delved deeper into the merits of the application filed by the petitioners under Order VII Rule 11 of the CPC. One of the



important grounds that the petitioners raised before the learned Trial Court was that the Suit cannot be adjudicated upon as the reliefs sought therein are barred under the law.

22. It is the case of the petitioners that in a suit under Section 6 of the Act, only relief of possession can be prayed for and granted and no other reliefs can be sought. Further, the Suit is not maintainable and is liable to be rejected as the respondent is not the title holder of the Suit Property, neither by way of a sale deed nor by way of other document such as agreement to sell, gift deed, will etc.

23. In pursuance of such submissions, the petitioners prayed for rejection of the plaint before the learned Trial Court. The said submissions made by the petitioners were rejected by the learned Trial Court stating that the grounds raised by the petitioners in their application for rejection of the plaint, cannot be dealt with and considered at the stage of *defendant's evidence*, when the issues are yet to be decided. It was held by the learned Trial Court that the merits of a Suit cannot be examined at the time of deciding an application under Order VII Rule 11 of the CPC and the said grounds are the subject matter of the trial, since, the evidence needs to be adduced in such matter.

24. Therefore, given the stage of the Suit and the grounds raised by the petitioner before the learned Trial Court, the learned Judge was satisfied with the appreciation of the record before him. It was held that the grounds raised by the petitioners are the subject matter of trial and cannot be allowed to be decided in an application under Order VII Rule 11 of the CPC, as it directly goes into the merits of the Suit.

25. At this stage, the scope of Order VII Rule 11 (d) of the CPC is



pertinent to be discussed. The relevant provision is reproduced herein below for reference:

“ORDER VII – PLAINT

Rule 11 – Rejection of plaint – This plaint shall be rejected in the following cases: -

..... (d) where the suit appears from the statement in the plaint to be barred by any law;”

26. The Hon’ble Supreme Court in ***T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467***, held that if on a plain reading of the plaint, the averments are manifestly vexatious and meritless, which also on the fact of it are not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC.

27. In the matter of ***Chhotanben v. Kiritbhai Jalrushnabhai 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].”

28. Further, the respondent, during the course of arguments relied upon a decision of the Hon’ble Supreme Court dated 6th July 2023 in **Sajjan Singh v. Jasvir Kaur & Ors., Civil Appeal No. 4221/2023**. In the said order, the Hon’ble Supreme Court held that the disputes pertaining to the relief sought in a suit is a subject matter for adjudication in a suit and the same cannot be decided in an application under Order VII Rule 11 of the CPC. The relevant



para of the abovementioned judgement is reproduced herein below:

“4. Having heard the learned counsel for the parties, we have taken note that the grievance essentially put forth by the respondents for which an application under Order VII Rule 11 was filed, is that the appellant herein, had not sought for an appropriate prayer to declare the sale deeds dated 03.12.2015 and 26.02.2016 as illegal, null and void and no court fee in that regard was paid.

5. To that extent, we take note that the prayer, as made, in any event, had been valued and the court fee has been paid. Whether an appropriate prayer should have sought, is a matter ultimately to be decided in the suit and not an issue to be considered while deciding the application under Order VII Rule 11 of CPC, in the manner in which it had been done in the facts and circumstances arising in the instant case. Therefore, to that extent, we are of the opinion that the High court was not justified.”

29. In the judgment of ***Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661***, it was held that the issues on merits of the matter which may arise between the parties would not be within the realm of the court at the stage of an application under Order VII Rule 11 of the CPC. Further, all the issues *qua* the suit, need not to be decided under an application for rejection of the plaint.

30. On a bare perusal of the abovementioned provision and judgments, for rejection of a plaint, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC is concerned, 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 VII Rule 11 of the CPC at any stage of the suit – before registering the plaint or after issuing of summons to the defendant i.e., at any time before



the conclusion of the trial.

31. At this juncture, this Court deems that it is appropriate to discuss the scope of revisional powers of High Court. The Hon'ble Supreme Court has reiterated the scope of such powers of High Court under Section 115 of the CPC, in the matter of ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807***, wherein it was observed as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the



Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

32. The scope of Section 115 of the CPC includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the trial court is erroneous due to a question of fact or of law does not amount to illegality or material irregularity. It embarks a peculiar kind of limitation. The High Court shall not interfere merely because the Court below has wrongly decided a particular suit at not being maintainable. It is also prudent to apply the ratio observed in the aforesaid judgments, by way of which, this Court finds that 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 ***Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201.***

33. The Hon’ble Supreme Court has explicitly settled that the Court exercising revisional powers shall not enter into the question of facts or evidence or any errors thereto, and shall limit itself to the question of errors in the exercise of jurisdiction.

34. As discussed in the foregoing paragraphs, the learned Trial Court in the instant case, considered the arguments raised on behalf of the petitioners in their application under Order VII Rule 11 (d) of the CPC, and also appreciated the law laid down *qua* the objections so raised. There is nothing in the impugned order which suggests that there is any error of jurisdiction



or other error which goes to the root of the matter and invites the intervention of this Court while exercising its revisional powers. It is not to be seen at this stage whether the suit itself will be successful, since the merits of the case itself need not be entered into, at the stage of rejection of the plaint.

35. In light of the judgments laid down, this Court is of the view 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. The learned trial Court has correctly passed the impugned order by stating that the issues raised by the petitioners relate to the merits of the Suit and the same are prudent to be adjudicated upon, at the time of deciding the matter on merits. Further, the said issues like appropriate relief, evidence annexed with the plaint, etc. cannot be dealt at a preliminary stage in a Suit. The dispute of the petitioners with regard to the reliefs sought in the alternative can very well be decided during the trial and not deciding the same in an application for rejection of the plaint does not make the impugned order illegal.

36. This Court is of the view that no case of revision as defined under Section 115 of the CPC has been made out by the petitioners, as no such cause exists wherein the learned Trial Court has failed to exercise its jurisdiction as per law. The learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity.

37. Accordingly, the issue framed above is decided.

38. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned Order dated 20th September 2022, in Civil Suit bearing No. CS/2674/2016, passed by the learned ADJ-03, East Karkardooma Court, Delhi.



39. Based on the aforementioned arguments, this revision petition is accordingly dismissed.
40. Pending applications, if any, also stand disposed of.
41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 1, 2023

Pa/Ryp

Click here to check corrigendum, if any