



2023:DHC:7434



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

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Date of order : 6th October 2023

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C.R.P. 285/2023 & CM APPL. 51762/2023 (Stay)

VEENA JAIN & ORS.

..... Petitioners

Through: Mr.Vijay Kumar, Advocate
alongwith P-3

versus

VINEETA JAIN

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

"a) Call for the complete records of Civil Suit No. CS DJ 770/2022 titled as "Kiran Jain alias Vineeta Jain Versus Veena Jain & Ors" which is pending before the Additional District Judge-02, North District, Rohini Courts.

b) Allow the present petition by setting aside the impugned order dated 18.08.2023 of the Ld. Additional District Judge-02 North District, Rohini Courts in Civil Suit No. CS DJ 770/2022 titled as "Kiran Jain alias Vineeta Jain Versus Veena Jain & Ors".



c) Any other further Order(s) and Direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The respondent i.e., the plaintiff before the learned Trial Court had filed a Civil Suit bearing no. CS DJ 770/2022 titled as “*Kiran Jain alias Vineeta Jain v. Veena Jain & Ors.*” against the present petitioners i.e., the defendants before the learned Trial Court seeking possession, recovery of damages and *mense profits qua* the Flat no. 725, situated at Veer Cooperative Group Housing Society, Plot no. 28, Sectore-13, Rohini, Delhi-110085 (hereinafter “Suit Property”).
3. In the above said Civil Suit, the petitioners had filed an application under Order VII Rule 11 read with Section 151 of the CPC. The said application was dismissed by the learned ADJ-02, North District, Rohini Courts, Delhi, vide the impugned order dated 18th August 2023.
4. Being aggrieved by the said dismissal, the petitioner has approached this Court seeking revision of the impugned order.
5. Learned counsel appearing on behalf of the petitioners submitted that the respondent by way of the above said Civil Suit is alleging that she is the owner of the suit property on the basis of documents such as General Power of Attorney, Agreement to Sell, Possession Letter and receipt; all dated 2nd February 1996, which are in favour of one ‘Mrs. Kiran Jain W/o Ch. P. Kumar R/o M-76, Guru Har Kishan Nagar, New Delhi-1110041’.
6. It is submitted that the learned Trial has failed to appreciate the settled law that at the stage of deciding the application under Order VII Rule 11 of



the CPC, the documents of the plaintiff are to be seen but on the contrary, it stated that only the plaint has to be considered.

7. It is submitted that the respondent has always been known to public at large in the name of Mrs. Vineeta Jain w/o Mr. Praveen Jain and her husband is always known as Mr. Praveen Jain s/o Late Shri Anand Kumar Jain.

8. It is submitted that the respondent is neither the owner nor the landlord of the property and the same is evident from the titled documents which are in favour of 'Mrs. Kiran Jain w/o Ch. P. Kumar'.

9. It is also submitted that the respondent has not mentioned in her plaint as to when did she **induct** Late Shri Vinay Kumar Jain in the suit property. It is further submitted that no identity document has been filed by the respondent and her husband along with the plaint before the learned Trial Court, to prove their identity that the respondent was earlier known as 'Kiran Jain' and her husband was known as 'Ch. P. Kumar'. Moreover, no pleading is made regarding this in the plaint.

10. It is submitted that the petitioners are the legal heirs of the deceased Late Shri Vinay Kumar Jain S/o Late Shri Anand Kumar Jain, who is the real brother of Mr. Praveen Jain, i.e., husband of the present respondent.

11. Learned counsel appearing on behalf of petitioners submitted that the learned Trial Court, while rejecting the application under Order VII Rule 11 of the CPC, has not considered the facts of the case and the submissions advanced on behalf of the defendant therein.



12. It is submitted that the respondent has not disclosed the cause of action which has been allegedly accrued in her favour as the owner of the suit property.

13. It is submitted that no plea has been made by the respondent to show as to how 'Vineeta Jain' was known as 'Kiran Jain' and how her husband 'Mr. Praveen Jain' was known as "CH. P. Kumar'.

14. It is submitted that in view of the foregoing paragraphs, the instant revision petition may be allowed and the impugned order dated 18th August, 2023 be set aside.

15. Heard learned counsel appearing on behalf of petitioners and perused the record.

16. It is the case of the petitioners that the respondent i.e., the plaintiff before the learned Court below have claimed that earlier she was known as 'Kiran Jain' and her husband Mr. Praveen Jain was known as 'Ch. P. Kumar'. Pursuant to the said averment, the respondent has further claimed her ownership *qua* the suit property stating that the General Power of Attorney, Agreement to Sell, Possession Letter and receipt; all dated 2nd February 1996; are in favour of one 'Mrs. Kiran Jain W/o Ch. P. Kumar R/o M-76, Guru Har Kishan Nagar, New Delhi-111004'.

17. The petitioner has argued that all such averments of the respondent made in her plaint are baseless and without any documentary support. The petitioner has contended that the respondent has not produced any identity proof which could state that she was previously known as 'Kiran Jain' or her husband was previously known as 'Ch. P. Kumar'.



18. On the basis of such arguments, the petitioner has approached this Court on the ground that the learned Trial Court whilst passing the impugned order dated 18th August 2023, failed to take into consideration the point that it also has to look at the documents annexed to the plaint, instead, it dismissed the same while holding that as per the averments made in the plaint, the application filed for rejection of the respondent's plaint is devoid of any merit. In view of such arguments as advanced by the petitioners, it has been submitted to the effect that the respondent has not disclosed the cause of action allegedly accrued in her favour for instituting the above said Civil Suit and the learned Trial Court erred in appreciating the same.

19. Since, the relevant facts and circumstances have been discussed in the foregoing paragraphs; this Court will briefly revisit the scope and extent of Section 115 of the CPC, which has been invoked by the petitioners in the present petition, thereby, seeking intervention of this Court by way of revision of the impugned order.

20. The Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivilal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201, which was followed by the Hon'ble Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. The Hon'ble Supreme Court in the said judgments has held that 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 that needs to be followed in its true letter and spirit. The High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable.

21. This Court is of the view that the plea of the revisionist can only be held to be maintainable where it is found that if the impugned order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

22. Now, delving into the scope and principles settled by the Hon'ble Supreme Court, with regard to the adjudication of applications filed under Order VII Rule 11 of the CPC.

23. This Court is of the view that the expression 'cause of action' as found in Order VII Rule 11 of the CPC, pertains to pleadings only. There are two meanings of the expression cause of action. The first meaning could be understood as the one which pertains to existence of the cause of action in the pleadings, and second meaning could be interpreted as the existence of the cause of action at the stage of final arguments and which means as to how the pleaded cause of action is ultimately proved. Under the scope of Order VII Rule 11 of the CPC, the second aspect is not an aspect which can be examined therein.

24. The court after a purposeful reading, as observed by the Supreme Court in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, should come to the conclusion that there was no cause of action disclosed in the plaint. There is no doubt that the court has to keep in mind that a clever



drafting of the plaint might have been resorted to by the plaintiff to create a cause of action when none existed.

25. In the matter of ***Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar***, (2018) 6 SCC 422, the Hon'ble Supreme Court has reiterated 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 but 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]."*

26. It is a settled law that while deciding an application under Order VII Rule 11 CPC, only the plaint should be seen and the defence which is set up/intended to be set up by the defendant is of no relevance. The said principle has been followed by the Hon'ble Supreme Court in the judgment of *Srihari Hanumandas Totala v. Hemant Vithal Kamat*, (2021) 9 SCC 99; *Kamala v. KT Eshwara SA*, (2008) 12 SCC 661 and *Shakti Bhog Food Industries v. Central Bank of India*, 2020 SCC OnLine SC 482.

27. However, this Court is of the view that the Courts while considering the maintainability of the plaint has to presume that the facts stated by the plaintiff to be correct and then arrive at the conclusion if



the cause of action was there or not. The Court cannot reject the plaint taking into account defendant's version that the facts were stated falsely. It is not that the Court is not empowered or it cannot dismiss the suit on the ground of concealment of facts or not coming to the Court with clean hands but that, such dismissal of a suit cannot be under Order VII Rule 11 of the CPC. Under Order VII Rule 11 CPC, the court has to reject the plaint if the conditions as mentioned in this provision are satisfied, i.e., either the suit is barred by some law or the suit does not disclose cause of action.

28. Now advertent to the facts of the matter in hand. The relevant portion of the impugned order passed by the learned Trial Court, while rejecting the application under Order VII Rule 11 of the CPC is quoted below:-

“10. The relationship in between the parties to the present suit is not in dispute. It is not in dispute that the defendants are the wife, daughter and son of Late Sh. Vinay Kumar Jain, the brother in law of the plaintiff. The plaintiff has categorically asserted in the plaint that the suit property was given to Late Sh. Vinay Kumar Jain in the capacity of a licensee and in the capacity of a caretaker only. As per the allegations as contained in the plaint, the occupation of Late Sh. Vinay Kumar Jain in the suit property was merely permissive. The plaintiff has categorically alleged that after the death of Sh. Vinay Kumar Jain, the defendants are the trespassers in the suit property...

11. Going by the above said assertions of the plaintiff as contained in the plaint, I am of the opinion that the plaint discloses a cause of action against the defendants and the pleas, set up by the plaintiff in the plaint, cannot be decided without evidence and trial. As a result, I have no hesitation to hold that the present application filed by the defendants is



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absolutely devoid of any merits and the same is hereby dismissed.

12. Application stands disposed off.”

29. Upon bare perusal of the impugned order, it is observed by this Court that the learned Court below had dismissed the petitioners’ application filed under Order VII Rule 11 of the CPC, since it was of the view that only the averments made in the plaint are germane and the said averments, on the face of it, depicts that there is a cause of action accrued in favour of the respondent herein, and the said cause of action has been properly disclosed in the plaint.

30. As per the averments made in the plaint in paragraph ‘2, 4 and 6 to 10’, it has been observed by this Court that the cause of action to institute the above said Civil Suit has been disclosed by the respondent in detail. It is further observed by this Court that the respondent in her plaint has enumerated that she is the sole and absolute owner of the suit property by virtue of a General Power of Attorney, Agreement to Sell, Possession Letter and receipt; all dated 2nd February 1996. The respondent, by way of her plaint, has further averred that her husband was in Indian Revenue Service. Since he was frequently transferred and Late Shri Vinay Jumar Jain had requested her permission to stay in the suit property, the same was allowed by way of permissive rights and as a caretaker. In view of the same, the respondent has stated in her plaint that the present petitioners are only trespassers to the suit property and that they have no rights *qua* it.



31. Keeping in view the arguments advanced by the learned counsel for the petitioners as well as upon perusal of the contents of the petition and the documents on record, this Court is of the view that the impugned order passed by the learned Trial Court has been passed within the scope of Order VII Rule 11 of the CPC.

32. The learned Trial Court was justified in contending that whilst adjudicating an application filed under Order VII Rule 11 of the CPC, 1908, only the averments made in the plaint are germane and that under the said provision, the court is not bound to look into the defence of the defendant.

33. 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 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 Court under Section 115 CPC cannot enter into merits of the case itself, at the stage of rejection of the plaint.

34. In light of the above, this Court is of the view that while adjudicating the petitioners' application filed under Order VII Rule 11 of the CPC, the learned Trial Court rightly decided the same and in consonance with the law laid down by the Hon'ble Supreme Court.



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35. This Court does not find any force in the propositions put forth by the petitioner and, is of the view that the petitioners have failed to make out their case to seek the intervention of this Court under its revisional jurisdiction.

36. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 18th August 2023, passed by the learned ADJ-02, North District, Rohini Courts, Delhi, in Civil Suit bearing no. CS DJ 770/2022.

37. For all the aforesaid reasons, no merit is found in this revision petition and the same is, hereby, held to be misconceived and unnecessary. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 6, 2023

Dy/ryp/db

Click here to check corrigendum, if any