



2023:DHC:8823



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

% **Date of order :24th November, 2023**

+ **C.R.P. 346/2023**

AMARJEET SINGH

..... Petitioner

Through: **Mr.Gaganpreet Singh and Ms.Navruti
Ojha, Advocates**

versus

GURPREET SINGH & ANR.

..... Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 60985/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

C.R.P. 346/2023 & CM APPL. 60984/2023 (Stay)

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

"a. Allow the revision & quash and set aside the Order dated 23.09.2023 passed by the Hon'ble Court of Shri Himanshu Raman Singh, ADDL/ Senior Civil Judge KKD Court in Civil Suit no. 547 of 2022 whereby Ld Court dismissed the application filed under Order 7 Rule 11 of the Code of Civil



Procedure filed by the petitioner and dismiss the Suit for mandatory and permanent injunction filed by the respondents..."

2. The brief facts leading to the filing of the instant petition are reproduced herein:

- i. On 6th October, 1959 one Mr. S Harcharan Singh and S. Swaran Singh i.e., the grandfather of the respondents and his real brother, purchased property bearing no. 1/2334, Ram Nagar, Mandoli Road, Shahdara, Delhi 110032 (hereinafter "Suit property").
- ii. In the year 1959, S Swaran Singh bequeathed the suit property to S. Gurnam Singh i.e., the father of the petitioner, who continued to reside at the said suit property.
- iii. Subsequent the demise of the grandfather of the respondents and the father of the petitioner, the families arrived at an arrangement with regards to the suit property, whereby, on 15th November, 2014 the petitioner was given possession of the partition at the ground floor and first floor.
- iv. Thereafter, the father and mother of the respondents extended threats to the petitioner, thereby, removing all the belongings of the petitioner from the suit property on the ground that since the petitioner's father was not the owner of the suit property, he had no right to execute any will in favour of the respondents.
- v. Subsequently, the petitioner filed a suit for declaration and



permanent injunction against the respondents and the same was dismissed vide order dated 24th December, 2021 on the grounds that the petitioner failed to produce any evidence to show that the will executed by his father, was attested, as required by law.

- vi. Thereafter, the petitioner filed an appeal bearing no. RCA DJ 15/22 titled as “S Amarjeet Singh vs. Jaswinder Singh” against the aforesaid order and the same is pending for adjudication.
- vii. Further, the respondents filed a suit for mandatory and permanent injunction bearing C.S. No 547/2022, following which the petitioner filed an application under Order VII Rule 11 of the CPC, and the respondents filed an application under Order XIII Rule 1 and 2 of the CPC.
- viii. Thereafter, the petitioner filed the reply to the application under Order XIII Rule 1 and 2 of the CPC, which was allowed by the learned Trial Court.
- ix. On 22nd September, 2023 the petitioner filed an application for amendment of application under Order VII Rule 11 of the CPC, thereby, raising certain new grounds which arose as a result of new documents filed by the respondents.
- x. Subsequently, the learned Trial Court provided the parties with an opportunity to rebut and the petitioner filed an application under Section 340 of the Code of Criminal Procedure, 1973.
- xi. Vide order dated 23rd September, 2023 the learned Trial Court dismissed the aforesaid application filed by the petitioner under



Order VII Rule 11 of the CPC. Aggrieved by the same, the petitioner has preferred the instant petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order passed by the learned Trial Court is in violation of the principles of natural justice and is bad in law.
4. It is submitted that the impugned order is based on conjectures and summaries and does not take into consideration the facts and material on record.
5. It is submitted that the learned Trial Court has misinterpreted and mis-construed the entire legal and factual position of the case which has resulted in a gross miscarriage of justice.
6. It is also submitted that the learned Trial Court has failed to appreciate that the General Power of Attorney (hereinafter “GPA”) dated 20th April, 1979 submitted by the respondents, which shows that the grandfather of the respondents signed the said GPA in favour of the father of the petitioner, is forged and was granted solely for the purpose of performing specific duties and personalities.
7. It is submitted that the learned Trial Court failed to consider that the respondents are claiming ownership of the suit property on the basis of Will dated 30th June, 2006 which was signed and registered by the grandfather of the respondents despite the fact that he was not the owner of the suit property, and hence the said Will does not force in the eyes of law.
8. It is submitted that the learned Trial Court failed to take into consideration that by including the agreement to sell, in the midst of the



power of attorney, the respondents were deliberately trying to deceive the Court.

9. It is further submitted that the learned Trial Court did not take into consideration that the respondent has filed the suit for mandatory and permanent injunction, without establishing his absolute ownership over the suit property.

10. It is submitted that the learned Trial Court did not take into account the fact that the appeal bearing no. RCA DJ 15/22 titled as “*S Amarjeet Singh Vs. Jaswinder Singh*” against the order dated 24th December, 2021 is still pending for adjudication.

11. In view of the foregoing submissions, it is prayed that the instant revision petition maybe allowed, and the impugned order dated 23rd September, 2023 be set aside.

12. Heard the counsel appearing on behalf of the petitioner and perused the material on record.

13. As per the material on record, the learned Trial Court vide the impugned order dated 23rd September, 2023 held that to adjudicate upon an application filed under Order VII Rule 11 of the CPC, the Court is required to peruse the averments made in the plaint and the documents annexed thereto, in order to assess the case of the petitioner. The learned Trial Court whilst passing the impugned order further observed that the grounds taken by the petitioner are triable issues and the Court will have to adjudicate the same on merits and the same cannot be decided in an application made under Order VII Rule 11 of the CPC. Relevant paragraphs of the impugned order



dated 23rd September, 2023 are reproduced below:

“ORDER

1. An application under Order 7 Rule 11 read with Section 151 CPC on behalf of the defendant for rejection of the plaint.

2. The defendant has advanced the following contentions:-

2.1. It has been contended that Mr. S. Harcharan Singh, S. Swaran Singh and S. Gurnam Singh (the grandfather of plaintiffs and father of defendant) are real brothers. Moreover, S. Gurnam Singh has two sons i.e. S. Jaswinder Singh (father of plaintiffs) and S. Amarjeet Singh (defendant herein).

2.2. It has been contended that on 06.10.1959, S. Harcharan Singh and S. Swaran Singh purchased the subject matter property from Shri Shanti Narain, Shri Prakash Narain, Shri Jai Narain and Shri Shiv Narain. After pursuing the sale deed filed by the plaintiffs, it is clear that only S. Harcharan Singh and S. Swaran Singh is the owner of the subject matter property not S. Gurnam Singh.

2.3. It has been contended that the said subject matter property was given to S. Gurnam Singh by S. Swaran Singh in 1979 to reside in while S. Gurnam Singh was working for his brother S. Swaran Singh. Due to love and affection, only permission possession was given to S. Gurnam Singh without any user charges.

2.4. It has been contended that in the present suit, the plaintiffs claiming the ownership on the basis of Deed of Will dated 30.06.2006 signed and registered by S. Gurnam Singh in favour of plaintiffs. Despite the fact that S. Gurnam Singh was not the owner of the subject matter property, he signed and executed the Deed of Will in favour of the plaintiffs. Hence, the Deed of Will dated 30.06.2006 stands void abinitio and hold no value and liable to be dismissed on this ground only.

2.5. It has been contended that the plaintiffs have submitted an alleged General Power of Attorney (GPA) dated 20.04.1979 in which S. Swaran Singh signed and executed the GPA in favour of S. Gurnam Singh on pages 6 and 7. The General Power of Attorney dated 20.04.1979 explicitly states on page 6 that the GPA was granted solely for the purpose of performing specific duties and



formalities. It is crucial to highlight that the plaintiffs have submitted counterfeit documents to this court, wherein the signatures of SwaranSingh have been forged and falsified.

2.6. It has been contended that the plaintiffs, with the intention of deceiving this court deliberately inserted pages 8 and 9, which contains a sale deed, in the midst of the power of attorney. This manipulation is clearly apparent since the notary stamp is noticeably absent only on these two pages. It is crucial to highlight that the plaintiffs have submitted counterfeit documents to this court, wherein the signatures of Swaran Singh have been forged and falsified.

2.7. It has been contended that the General Power of Attorney, Sale Deed and other documents containing forged and counterfeit signatures of S. Swaran Singh, solely to establish ownership of the property in question. Moreover, the defendant is filing a copy of the re-allotment letter and Pan Card of Swaran Singh with the reply to verify the authenticity of S. Swaran Singh's signature.

2.8 It has been contended that the plaintiffs have filed the present suit for mandatory and permanent injunction against the defendant without establishing his absolute ownership of the subject matter property. Hence, the present suit has not been properly valued for the purpose of court fees as the plaintiffs in the name of plaintiffs mandatory and permanent injunction has actually sought the possession of the suit property. Moreover, plaintiffs have used the word the relief as 'mandatory injunction' and further sought that the defendant be directed to handover the possession of the suit property, which is a relief of possession and as per Section 7 (v) of the Court Fees Act, 1870. Therefore,, the suit has to be valued for the purpose of court fees at the market value of the suit property.

2.9. It has been contended by the defendant that the plaintiffs has not showed declaration of ownership has titled is disputed. It is further contended that documents filed by the plaintiffs contain different signatures. It is further contended that the plaintiffs has not filed proper court fees and the plaintiffs do not have any cause of action to file the present suit.



3. *Per contra*, it has been contended by the plaintiffs that the plaintiffs are already in possession of the suit property, therefore, court fees has been paid properly.

3.1. It has been contended that at the time of consideration of the application only the plaint has to be seen and the written statement as well as documents filed by the defendants have no concern.

3.2. It has been contended that the present application is not maintainable as the same has been filed by the defendant with sole motive to delay the proceedings of this court and further to harass the plaintiffs who have already suffered physically, financially and mentally and the present application is abuse and misuse of process of law, hence the application of the defendant is liable to be dismissed with heavy cost.

3.3. It has been contended that the present application is not maintainable either under equity or under law of land in view of the facts that the plaintiffs have very good cause of action in their favour and against the defendant as mentioned in detail in detail in the plaint and the defendant has moved false and frivolous application with mala fide intention to delay the proceedings of the case.

3.4. It has been contended that the suit of the plaintiffs are very well maintainable as the plaintiffs are the rightful owner of the suit property by virtue of registered Deed of Will already placed on record.

3.5. It has been contended that the application is not signed by the defendant and its violation of law. It has been further contended that the plaintiffs are the owner of the suit property.

4. Before proceeding further, it would be appropriate to refer to the legal position. Order 7 Rule 11 CPC reads as under:-

"Order 7 Rule 11 CPC - Rejection of plaint-The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action:



(b) Where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law,

(e) Where it is not filed in duplicate:

(f) Where the plaintiff fails to comply with the provisions of Rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave Injustice to the plaintiff."

5. It is settled law that at the time of adjudication of Order 7 Rule 11 CPC application, only the contents of the plaint are to be seen.

"In Gunjan Khanna & Anr. (Ms.) Vr. Mr. Aranable Suit no. 149/15 Page no. 2/11 Maitra 2010 IV AD (Delhi) 238, it was held that, "For the purpose of deciding an application under Order 7 Rule 11 CPC, the court is only required to examine the plaint and neither the written statement, nor any other pleadings should be a matter of consideration at the said stage" Further, in Saleem Bhai & Ors vs. State of Maharashtra and Others, (2003) 1 SCC 557, was held that "For the purposes of deciding on application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleat taken by the defendant in the written statement would be wholly irrelevant at that stage"



6. *It view of the law as mentioned above, at this stage for deciding maintainability of the suit, only the contents of plaint and documents so relied by the plaintiffs are germane.*

7. *This court is of the considered view that the contentions raised by the defendants are triable issues which cannot be decided at this stage in the absence of evidence. In view of the aforementioned discussion, there is nothing the plaintiff to show that it can be rejected. The plaintiffs have claimed themselves to be the owner of the suit property. The suit property falls in Police Station - M. S. Park and this court has jurisdiction over the suit property. Accordingly, application under Order 7 Rule 11 CPC filed by defendant is dismissed.*

8. *Put up for framing of issues on 21.12.2023. Proposed issues along with affidavit/admissions denial of documents be filed."*

14. It is a settled principle of law that the provision under Order VII Rule 11 of the CPC, provides for rejection of a plaint, and the scope of judicial inquiry in an application under the said rule is limited to examining the averments made in the plaint. The Court has the authority to dismiss the plaint for lack of cause of action, if the relief sought is undervalued or the valuation is not corrected within the time period set by the Court; or if insufficient court fees is paid or the additional court fees are not provided within the time period set by the Court; or if the plaint alleges that the suit is barred by the provisions of any statute. It is under these circumstances that the Court may consider rejection of a plaint.

15. In the instant petition, the petitioner is seeking revision of the impugned order, whereby, the petitioner's application under Order VII Rule 11 of the CPC, was dismissed by the learned Trial Court. It has been stated in the impugned order that the plaint filed by the respondent cannot be



rejected on the grounds that constitute triable issues and hence, the same cannot be intervened with by the learned Court below, at the stage of deciding the application under Order VII Rule 11 of the CPC. Such instances have been analysed by the Hon'ble Supreme Court in a catena of judgments.

16. 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."

17. 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.

18. The aforesaid issue has also been dealt with in multiple cases before this Court such as, in the case of ***Avtar Singh Narula v. Dharambir Sahni***, **2008 SCC OnLine Del 680**, wherein, a Division Bench of this Court held the following:

“14.... In view of the above said circumstances, we are of the view that there is a valid reason for filing the suit and there are triable issues involved wherein evidence of the party is required. Hence the contention of the appellants cannot be accepted. Thus, the application of the appellants under Order VII Rule 11 CPC was not maintainable and order passed by the learned Single Judge is sustained.....”

19. This Court, in the case of ***Avtar Singh Narula (Supra)*** further expounded upon the settled legal principle governing Order VII Rule 11 of the CPC. The Bench held that the issues that are brought before the Court cannot be decided in an application filed under Order VII Rule 11 of the CPC, wherein, the evidence of the parties is required to be analysed or it constitute issues that are triable in nature. It has also been established that where there is a valid reason for filing the suit and the issues involved are those that require evidence of the parties, there is no ground made out for the High Court to interfere with the findings of the subordinate Courts.

20. Since it is observed that there is no infirmity in the impugned order which is under the challenge before this Court, therefore at this stage; it becomes pertinent to examine the scope of the revisional jurisdiction of this



Court under Section 115 of the CPC. The Hon'ble Supreme Court in *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*, (2017) 14 SCC 132, propounded that the High Court cannot interfere with the factual findings of a Trial Court in exercise of its revisional jurisdiction. Such jurisdiction remains restricted to cases, wherein, there is an irregular exercise of jurisdiction by the subordinate Courts.

21. Similarly in the case of *ITI Ltd. v. Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510, the Hon'ble Supreme Court *vis-à-vis* the scope of Section 115 of the CPC, held that the supervisory or revisional jurisdiction exercised by the High Court is limited to the purpose of correcting jurisdictional error, if any, committed by a subordinate Court.

22. In the instant case, the learned Trial Court deemed it fit to not reject the plaint on the grounds taken by the petitioner and held that the submissions made by the petitioner would require the Court to go into the intricacies of the suit and the same is not permissible in an application made under Order VII Rule 11 of the CPC.

23. As per the averments made in the plaint, it is categorically mentioned under paragraph 5 that the respondents herein are claiming absolute ownership on the basis of the registered Will dated 30th June, 2006 and the same is being disputed by the petitioner, therefore the learned Trial Court has rightly dismissed the application under Order VII Rule 11 of the CPC, since the aforesaid issue is one that must be settled at trial and cannot be determined solely on the basis of the averments made in the plaint.

24. The learned Trial Court has rightly adjudicated upon the application



of the petitioner filed under Order VII Rule 11 of the CPC, as the grounds taken by the petitioner cannot be determined at the stage of deciding an application under the said provision and can only be ascertained when the parties lead the evidence during the trial. Any issue brought forth by the parties, which require the Court to go into the complexities of the evidence, cannot be decided in an application under Order VII Rule 11 of the CPC.

25. In view of the principle laid down in the aforesaid judgments and its application on the current facts and scenarios, this Court is of the view that the decision of the learned Trial Court cannot be termed illegal or materially irregular merely on the grounds that the Court erroneously decided the question of law involved therein. Rather, Section 115 of the CPC, embarks a peculiar kind of restraint that needs to be followed in its true spirit. This Court is empowered to exercise its revisional powers where material irregularity or jurisdictional illegality is established and no interference is required merely on the grounds of wrong adjudication of an application.

26. In light of the above discussions, it is evident that no case of revision under Section 115 of the CPC, has been made out and the petitioner has failed to show that there exists sufficient cause which can establish the failure on part of the learned Trial Court in exercising its jurisdiction while deciding the application under Order VII Rule 11 of the CPC. Therefore, the learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity.

27. This court is of the view that no interference is warranted with the impugned order dated 23rd September, 2023 passed by the Court of Shri



2023:DHC:8823



Himanshu Raman Singh, Additional/Senior Civil Judge Karkardooma Court, New Delhi in suit bearing no. 547/2022, thereby, rejecting the application of the petitioner under Order VII Rule 11 of the CPC.

28. Accordingly, this revision petition is dismissed. Pending applications, if any, also stand dismissed.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 24, 2023

Dy/ds/ryp

Click here to check corrigendum, if any