



2023:DHC:9442



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

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

+ **C.R.P. 390/2023 and CM APPL. No.67190/2023**

JOGINDER KHANNA & ORS. Petitioners

Through: **Mr.Anil K Gujral and Mr.Vikram
Gujral, Advocates**

versus

MAIMAN & ANR. Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

- "a. The Trial Court record may be requisitioned,*
- b. The present petition may kindly be allowed,*
- c. The impugned order dated 01.11.2023 passed by the court of Sh. Chanderjit Singh, Addl District Judge- 05, South, Saket, New Delhi passed in C.S/D.J/No.413/17 titled as Maiman and another versus Joginder Khanna and others may kindly be set aside,*
- d. Suit No. C.S/ D.J/ No. 413/17 titled as Maiman and another versus Joginder Khanna & Ors pending before the Court of Sh. Chanderjit Singh, Addl District Judge- 05, South, Saket, New Delhi, be dismissed under Order 7 Rule 11 of the Code of Civil*



Procedure, in the interest of justice.

e. Any other or further relief which this Hon'ble court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner and against the respondent.”

2. The facts of the present petition are as follows:
 - a. The respondents herein (plaintiffs in the suit) filed C.S./D.J. no. 413/2017, in which they pleaded that one Shri Mithu was the owner of the property bearing Khasra no. 45/2 and 44/2 measuring 3 bigha 11 biswas and 0-18 biswas, in the revenue estate of village Chandan Hulla, New Delhi (hereinafter “suit property”). The said owner expired leaving behind two sons namely Shri Sheri and Shri Meedan @ Maid Khan who became the co-owners of the abovesaid property having half share each.
 - b. Further, after the death of Shri Sheri, his only son namely Shri Kamruddin @ Kamru became the absolute owner of half share in land bearing Khasra no. 45/2 and 44/2. Thereafter, Shri Meedan @ Maid Khan also expired leaving behind one son namely Shri Fazru (defendant no. 5 in the suit), thereby making both Mr. Kamruddin @ Kamru and Mr. Fazru the absolute owners of the respective undivided equal share in the suit property. Furthermore, plaintiffs no. 1 and 2 as well as defendants no. 6 to 9 are also the legal heirs of Shri Kamruddin. Plaintiff no. 1 (respondent



no. 1 herein) is the widow of Shri Kamruddin.

- c. It has been stated that the defendants no. 1 to 4 (petitioners no. 1 to 3 herein and their deceased wife/mother namely Smt. Asha Khanna, arrayed as defendant no. 2 in the suit) purchased adjacent properties surrounding the suit property, thereby, enclosing the suit property and landlocking the same.
- d. It has also been stated that, prior to the filing of the suit, the petitioners requested the respondent no. 1 to allow them to raise the boundary walls in order to safeguard their property and upon the condition put up by the respondent no. 1 that the legal heirs of late Shri Sheri shall not be stopped from enjoying their property, the petitioners raised the boundary wall and put a gate therein. However, on 30th October, 2015 the employees of petitioners allegedly stopped the respondent no. 1 from entering into the suit property.
- e. Subsequently, the respondents filed the afore mentioned civil suit seeking declaration and injunction against the petitioners herein, and claimed that the petitioners herein have no right, title or interest in the suit property, and as such are liable to vacate the same. The respondents further claimed *mesne profits* of Rs. 50,000/- from the petitioners and further claimed a restraining order to prohibit the petitioners from selling, transferring or creating third party



interest in the suit property. During the pendency of the said civil suit, the respondents had filed an application for amendment of plaint which was allowed by the learned Court below.

- f. Thereafter, the petitioners filed an application under Order VII Rule 11 read with Section 151 of the CPC, seeking rejection of the plaint of the respondents and the learned Trial Court dismissed the said application vide the impugned order dated 1st November, 2023.
- g. Being aggrieved by the said dismissal, the petitioners have approached this Court under its revisional jurisdiction, thereby, challenging the impugned order.

3. Learned Counsel appearing on behalf of the petitioners submitted that the learned Trial Court had failed to take into consideration the entirety of facts and circumstances of the instant dispute.

4. It is submitted that learned Court below had failed to exercise its jurisdiction under Order VII Rule 11 of the CPC since it erred in appreciating that the respondents have tried to create an illusory cause of action by stating that the petitioner purchased the adjacent properties during the course of time whereas the petitioners have purchased a parcel of agricultural land which included the suit property but the respondents by clever drafting did not mention the facts of such purchase. Further, the actual date of purchase has also been not disclosed by the petitioner with a



misconceived view to extend the limitation period.

5. It is submitted that the learned Trial court did not give a meaningful reading to the plaint as well as the document, i.e., the Khatoni, in respect of land measuring 0.18 biswas in Khasra No. 44/2, revenue estate of Village Chandanhulla which was filed with the amended plaint and relied upon by the respondents to prove the ownership of their forefathers thereon.

6. It is submitted that even the said copy of Khatoni contains all the entries as stated in the previous Khatoni in respect of land in Khasra No. 45/2. It is further submitted that both these documents are the documents of the respondents, filed with a view to prove ownership of their forefathers over the suit property but the documents speak otherwise. Thus, the respondents by clever drafting and concealment of material facts tried to create illusory cause of action but the learned Trial Court did not give meaningful reading to the contents of the plaint and above stated documents.

7. It is submitted that the learned Court below failed to follow the settled proposition of law as laid down by the Hon'ble Supreme Court in *T. Arivandandam Vs. T.V. Satyapal*, (1977) 4 SCC 467, wherein, it was held that if the Court, on a meaningful but not formal reading of the plaint finds the same to be manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII Rule 11 of the CPC.

8. It is submitted that the learned Trial Court further erred in concluding that the issue regarding the limitation is a mixed question of facts and law.



The learned Court below erred by not giving meaningful reading to the contents of the plaint and the documents such as the Khatonis annexed with the plaint and dismissed the plea of the petitioners by not holding that the suit is hopelessly barred by limitation.

9. It is submitted that upon a meaningful reading of the plaint and Khatonis, it is evident that the respondents herein (plaintiffs in the suit) were aware of the sale of the suit property by their forefathers in the year 1986, as is evident from the Khatonis which were in their possession, but the respondents (plaintiffs in suit) in para 11 of the plaint, intentionally avoided giving dates of sale of suit property and by clever drafting stated '*during the course of time*'.

10. It is further submitted that the said dates of purchase were well within the knowledge of the respondents (plaintiffs in the suit) before filing of the suit and the documents were also in their possession. Hence, the respondents herein have tried to bring the suit for declaration of sale deeds as null and void, within period of limitation and the same is evident from the averments made in the plaint. As per Article 59 of the Limitation Act, 1963, 3 years is the period of limitation. Thus, if 17th February, 1987 i.e., the date of entry of mutation, is considered, the suit of the respondents filed in the year 2017 which is after a period of 31 years is clearly barred by limitation.

11. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

12. Heard the learned counsel appearing on behalf of the petitioners and



perused the record.

13. Before proceeding further, it is relevant to consider the limited scope of Section 115 of the CPC, under which the instant petition has been filed. This Court has powers which can be exercised under Section 115 of the CPC, to set aside any order only if that order suffers from error of jurisdiction. The said error of jurisdiction includes the irregular exercise, or non-exercise of it, or the illegal assumption of it.

14. The ratio observed in the judgments of the Hon'ble Supreme Court, is 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. The said principle was held by the Hon'ble Court in the judgment passed in ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807***, which has been reaffirmed in ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8 SCC 633***.

15. Keeping in mind the above, this Court is of the view that the High Court shall not interfere merely because the Court below has wrongly decided a particular application in a suit being not maintainable, but may interfere if the Court below has exercised its jurisdiction illegally or if there is a material irregularity found in the exercise of jurisdiction by the Trial Court.

16. It has been submitted by the petitioners that the respondents had filed the suit for declaration, declaring them to be the owners having ½ share in the property/agricultural land adm. 3 bigha 11 biswas in Khasra no. 45/2 and another land adm. 0/18 biswas in Khasra no. 44/2 within the revenue



estate of village Chandanhulla, Delhi, and for preliminary decree of partition of the said land amongst the plaintiffs and defendants no. 5 to 9 as well as for a decree of possession of the said land, and for declaring the three sale deeds registered with the Registrar of documents on 11th September, 1986, in respect of the above said land along with other land, in favour of the defendants no. 1 to 4, as null and void. The respondents are claiming that they have inherited their title to the land in question as the same have been delved upon them from their forefather, i.e., Shri Sheri.

17. It is the case of the petitioners that they purchased the land admeasuring 3 bighas 10 biswas falling in Kahsra no. 50/1 (2-8). 49 (4-16). 44/2 (0-18), 45/2 (3-11), 44/1 (0-12) and 45/1 (1-5) situated within the Revenue Estate of Village Chandanhulla, vide the registered sale deeds each dated 11th September, 1986 from Smt. Amit Aggarwal. The petitioners claim themselves to be the registered owners of the land in question since the year 1986, and entries in the revenue records proves the said fact and are in possession of the said property since the year 1986. It has been submitted on behalf of the petitioners that Shri Sherri, his wife Smt. Dharmo and even Shri Kamaruddin never objected to the possession of the petitioners over the property in question.

18. The petitioners have contended that the respondents are neither owners nor in possession of the land in question and the fact stands proved from the documents filed and relied upon by the respondents before the learned Trial Court, hence, there is no cause of action for filing the suit and the same is liable to be dismissed. Further, the documents filed on



record by the respondents do not show that property in question was ever inherited by ShriKamruddin or there is any entry to the fact that he was ever in possession of the said property. The present suit is barred by limitation and the suit property was purchased by the petitioners (defendants no. 1 to 4) in the year 1986 and since then they are in actual physical possession of the same. The above stated sale deeds in favour of the petitioners have been executed and registered in the year 1986, and in view of provision of law and the unchallenged documents on record, the suit of the respondents is liable to be dismissed being barred by limitation and without any cause of action. Hence, the application filed under Order VII Rule 11 of the CPC, ought to be allowed since the learned Court below erred in taking into consideration the above facts and circumstances which amounts to error of jurisdiction.

19. The respondents, i.e., the plaintiffs before the learned Trial Court had contended there that the present petitioners are not entitled for any relief. It was contended that the petitioners' application is an abuse of the process of law and the petitioners are neither the owners of the suit property nor do they have any right, title and interest in the suit property.

20. The learned Trial Court whilst dismissing the petitioners' application observed that to entertain the petitioners' contention there is required a full-fledged trial to determine the real controversy among the parties. It further held that the from a bare perusal of the plaint, the cause of action is apparent and the contention with regard to the limitation period is a mixed question of facts and law which can only be adjudicated upon after



deliberation of witness and evidences. The relevant portion of the impugned order dated 1st November, 2023 is as under:

“..7. Coming to the facts of the case, plaintiffs in their plaint has contented that they are co-owner of the suit property. It is so contented in plaint wherein it is stated that plaintiffs are the successors in the estate of Late Kamruddin and thereby have their claim and joint ownership rights of their respective shares in respect of property of Late Sh. Kamruddin @ Kamru. It is also contented that plaintiffs were prevented to enter into the suit property by closing the main gate of the suit property. It is also contented that the plaintiffs have every right to enjoy the property being the successor of Late Kamruddin @ Kamru. Thus, since there are specific averments in the plaint of inheritance of the suit property in favour of plaintiffs, therefore, applying the above noted settled principle of law in this regard, suit is required to proceed with the matter further to bring the clear picture of real controversy between the parties and it cannot be said that averments in plaint are such which does not show any cause of action at all. Further, other contention raised in the application that suit is barred by limitation. In the present matter, issues are yet to be framed and evidence on behalf of both the parties is still to be led. The issue of contention of limitation is a mixed question of facts and law. This issue shall be adjudicated upon when both the parties shall lead their respective evidence.

8. In view of the above discussion, I do not find any merit in the application u/s VII rule 11 CPC filed on behalf of defendants. Hence, same is hereby dismissed...”

21. The law regarding the jurisprudence followed in adjudicating an application under Order VII Rule 11 of the CPC, is no more *res integra* and



the principles defining the jurisdiction of the Court under the above said provision has been crystallized by the Hon'ble Supreme Court in a catena of judgments.

22. 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.

23. Further, the Hon'ble Supreme Court had held that the question of limitation is a mixed question of law and fact. If on the reading of a plaint, *ex facie* the Court is not able to draw an opinion of it being barred by time, then such issue must not be dealt in an application for rejection of plaint. Consequently, the suit in such case, could not be dismissed as barred by the limitation without proper pleadings, framing of an issue of limitation and taking of evidence. The same principle has been enunciated by the Hon'ble Court in ***Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 662.***



24. Further, in the judgment of ***Kamala & Ors. vs. K.T. Eshwara & Ors.***, **AIR 2008 SC 3174**, the Hon'ble Supreme Court held that:

“15. Order VII, 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...”

25. The Hon'ble Supreme Court has time and again, reiterated the settled principles of law while deciding an application seeking rejection of a plaint on the ground of limitation. In the dictum of ***P.V. Guru Raj Reddy v. P. Neeradha Reddy***, **(2015) 8 SCC 331**, the Hon'ble Court has further clarified the ambit of the provision under Order VII Rule 11 of the CPC, and discussed as under:

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are



correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

26. At the outset it can be held that the plea of limitation cannot be decided as on abstract decision of law, divorced from facts, inasmuch as in every case, the issue of limitation has to be ascertained based on the averments put forward in the plaint and as such, it varies from case to case. There cannot be any straight jacket formula. The Hon'ble Supreme Court has repeatedly held that when a plea regarding rejection of plaint is made for invoking the provision under order VII Rule 11 of the CPC, it is the averments made in the plaint alone, which has to be looked into and no amount of plea made in the written statement or the objection taken in application made under the above said provision can be examined.

27. Furthermore, in view of the aforesaid judgements, it is patently clear that for the examination of an application under Order VII Rule 11 of the CPC, it is only the averments laid down in the plaint which has to be taken into account and read in entirety. If it is *ex facie* decipherable from such averments that the suit is barred by limitation, counted from the date of presentation of plaint, then no further enquiry is to be undertaken. Such vigilant examination is imperative to reject vexatious plaints outrightly, so



that conduction of trial is not rendered futile.

28. In light of the above, this Court has referred to the plaint filed by the respondents before the learned Court below which is appended as Annexure P-2 herein. Upon perusal of paragraphs 1 to 11, 14, 17-26A, of the plaint, it has been observed that there exists a cause of action in favour of the respondents to file their suit.

29. Taking into account the issue in the civil suit which is regarding the inheritance of the suit property, ownership and partition etc., this Court is of the view that the dispute between the parties requires a full-fledged trial and only after leading of evidences by both the parties, which is the due process, there could be proper adjudication of the aforementioned issues. Therefore, it is necessary for the learned Trial Court to proceed with the matter and the grounds raised in the application filed under Order VII Rule 11 of the CPC, cannot be entertained at such an early stage since the matter before the learned Court below involves certain issues which are triable in nature.

30. Further, upon bare reading of the said plaint, there is nothing *ex facie* which shows that the respondent's suit is barred by limitation. Even if there is any meritorious ground, the same cannot be decided in an application filed under Order VII Rule 11 of the CPC due to the settled legal position which has been established and enunciated hereinabove. The learned Court below observed that the issue of limitation is not a simple issue that can be decided by way of plain reading of the averments made in the plaint as the same is a mixed question of law and facts. This Court does not find any illegality or irregularity *qua* the said observation of the learned Trial Court.



31. This Court is of the view that Order VII Rule 11 of the CPC, empowers the Court to reject a plaint where any of the conditions specified in the said provision is fulfilled and one of the clauses provided under Order VII Rule 11 of the CPC, seeking rejection of a plaint is that where the plaint is barred by any law.

32. The Hon'ble Supreme Court has clarified that while determining any application filed under Order VII Rule 11 of the CPC, the Courts should restrict themselves to the plaint and not go into the detailed facts as provided in the application filed under Order VII Rule 11 of the CPC. It is thus clear that the powers conferred on the Court to reject a plaint is not an ordinary one, and the conditions enumerated under Order VII Rule 11 of the CPC, are required to be strictly adhered to. However, under the said rule, it is the duty of the Court to determine whether the plaint deserves to be rejected, by scrutinizing the averments made in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

33. Considering the same, the learned Trial Court has meticulously taken into account the necessary facts and circumstances, and rightly concluded that the question of limitation in view of the factual matrix and legal position of the instant case can only be decided, once the parties are preferred an opportunity to lead their respective evidence. In view of the same, this Court upholds the said reasoning stated by the learned Trial Court while passing the impugned order.

34. It is a settled law that this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and not to go into



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the merits of the case. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below.

35. In the absence of the same and in regard to the legal principles settled by the Hon'ble Supreme Court and this Court in a catena of judgments, there is no merit in the arguments advanced by the petitioner. In view of the same, the learned Trial Court rightly decided the petitioners' application to be devoid of any merits.

36. Therefore, in light of the foregoing paragraphs and observations made therein, it is held that no case has been made out to interfere with the impugned order dated 1st November, 2023, passed by learned ADJ-05, South District, Saket Courts, New Delhi, in civil suit bearing no. CS DJ no. 413/2017.

37. 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

DECEMBER 22, 2023

rk/ryp/ds

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 02.01.2024
16:20:05

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