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

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Reserved on: 27th July, 2023

Date of Decision: 26th September, 2023

+ **CM(M) 135/2021 & CM APPL. 6095/2021**

SHATRUNJAY

..... Petitioner

Through: Mr. Arpit Bhalla, Advocate

versus

AVINASH GULATI

..... Respondent

Through: Mr. A.C. Bhasin, Advocate

+ **CM(M) 1422/2018 & CM APPL. 48668/2018**

AVINASH GULATI

..... Petitioner

Through: Mr. A.C. Bhasin, Advocate

versus

SHATRUNJAY

..... Respondent

Through: Mr. Arpit Bhalla, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The CM(M) No. 1422/2018, filed under Article 227 of Constitution of India, impugns the order dated 04.09.2018 passed by the Civil Judge, North District, Rohini Courts, Delhi ('Trial Court') in civil suit no. 35045/2016, dismissing the application filed by the Petitioner herein i.e., the defendant, under Order XII Rule 6 of Code of Civil Procedure ('CPC'). The Petitioner is admittedly, the owner of the suit property and has been arrayed as a defendant in the suit.

1.1. The CM(M) No. 135/2021, filed under Article 227 of Constitution of



India, impugns the subsequent order dated 30.11.2019 arising out of the same suit proceedings, whereby the Trial Court dismissed the application filed by the Petitioner herein i.e., the plaintiff, under Section 151 of CPC seeking restoration of possession of shop No. G-50, lower ground floor, Verdhaman Market, West Enclave, Pitampura, Delhi (**'suit property'**) and grant of injunction in the form of status quo ante. The Petitioner contends that he was a tenant in the suit property and is the plaintiff in the suit. The Respondent has disputed the tenancy and stated that Petitioner was a helper employed by him. The Petitioner admittedly, as on date is out of possession.

1.2. Since these are cross-petitions, for the sake of convenience, the parties are being referred to by their original rank and status before the Trial Court.

2. Brief facts leading to the filing of aforesaid petitions are as under:

2.1. A suit for permanent injunction has been filed by the plaintiff i.e., Mr. Shatrunjay, seeking a restraint against the defendant i.e., Mr. Avinash Gulati, owner of the suit property, from illegally dispossessing the plaintiff from the suit property and denying him entry into the suit property or causing obstruction in any manner whatsoever.

2.2. The plaintiff has filed the said civil suit in November, 2011 asserting that he is a tenant in the suit property since the year 2002; and is running the business of selling gift items in the name and style of 'M/s Archies Gift Shop'. It is stated that the plaintiff has been paying rent of Rs. 1,200/- per month (in cash) and has also paid a sum of Rs. 2,50,000/- as security (in cash) to the defendant towards the tenancy.

2.3. It is stated that the cause of action, inter-alia, arose on 10.11.2011,



when the defendant snatched the keys to the suit property, refused to return them and threatened the plaintiff to vacate the suit property. It also arose on 19.11.2011 when the defendant threw goods of the plaintiff and threatened to implicate the defendant in false cases. In these circumstances, the plaintiff filed the civil suit seeking permanent injunction against the defendant.

2.4. The defendant filed his written statement on 18.02.2012, stating that he is in exclusive possession of the entire Shop No. G-50 (which comprises of upper ground floor and lower ground floor) and is carrying on the business of sale of gift items under the name and style of 'M/s Aakarshan Point'. It is stated that plaintiff was hired as a 'servant' in the said shop, as the defendant was not in a position to look after the entire business being run in two portions of Shop No. G-50 i.e., ground floor and lower ground floor. The defendant denied the relationship of landlord and tenant and stated that he is in exclusive possession of the Shop No. G-50. It is stated that on 11.02.2012, the defendant learnt that the plaintiff has opened the Shop No. G-50 using unauthorizedly made duplicate keys which led to dispute between the parties. The defendant filed a police complaint dated 12.02.2012 with the concerned police station.

2.5. The Trial Court vide order dated 08.06.2012, allowed the application filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC and in exercise of its jurisdiction under Section 151 CPC directed the defendant to remove his lock and hand over the duplicate keys of the shutter to the plaintiff. There is a solitary shutter outside Shop No. G-50, which grants access to both the ground floor and the lower ground floor. The plaintiff claims tenancy of the lower ground floor. The Trial Court further,



restrained the defendant from forcibly dispossessing or obstructing the plaintiff in entering in the suit property (i.e., lower ground floor). The said order was challenged by defendant before this Court in CM(M) 745/2012, however, the same was dismissed vide order dated 27.08.2012.

3. The defendant subsequently, filed before the Trial Court certain bills and invoices to contend that the plaintiff had received goods from suppliers and distributors at Shop No. G-50, on behalf of the plaintiff; and that the same is evident from the signature of plaintiff, which has been affixed on the said documents in the capacity employee.

3.1. The defendant in view of the aforesaid documents filed three separate applications i.e., (i) application under Order XXXIX Rule 4 of CPC for vacation of interim order dated 08.06.2012, (ii) application under Order VII Rule 11 of CPC read with Section 151 of CPC for rejecting the plaint, and (iii) application under Order X Rule 2 of CPC for recording the statement of plaintiff. The statement of the plaintiff was recorded before the Trial Court on 11.10.2013 under Order X of CPC.

3.2. The Trial Court thereafter, vide order dated 14.11.2014, allowed the application filed under Order 7 Rule 11 of CPC and dismissed the suit of the plaintiff; and consequently, the interim order dated 08.06.2012 stood vacated. The Trial Court, however, granted one (1) month time period to the plaintiff to vacate the suit property.

3.3. The plaintiff filed an appeal against the order dated 14.11.2014 before the SCJ, Rohini Courts, Delhi ('Appellate Court'). The said Court stayed the operation of the order dated 14.11.2014 and the directions contained in paragraph 28 of the said order directing the plaintiff to hand over possession of the suit property to the defendant. The said appeal was



allowed by Appellate Court vide order dated 27.05.2015 in RCA No. 2/2015 and the matter was remanded back to the Trial Court with directions for expeditious disposal within six (6) months. However, the matter has remained at the stage of completion of pleadings and no issues have been framed till date.

4. The plaintiff thereafter in November, 2015, filed an application under Section 151 of CPC before the Trial Court seeking restoration of possession of suit property and thereafter, grant of an injunction in the form of status quo ante. The plaintiff pleaded that on 26.11.2014 and 16.05.2015, when he visited the suit property, he found out that the defendant has opened the shutter of Shop No. G-50 and had stolen plaintiff's goods from suit property.

5. The defendant on 04.09.2018 filed an application under Order XII Rule 6 of CPC, seeking dismissal of the suit on the ground that the documents filed by plaintiff before the Trial Court do not substantiate the plea of tenancy and the documents filed by the defendants show that the plaintiff was employed as a helper in Shop No. G-50. This application was dismissed by the Trial Court vide impugned order dated 04.09.2018 and this order has been impugned by the defendant in CM(M) 1422/2018.

6. The Trial Court however, vide impugned order dated 30.11.2019, has dismissed the plaintiff's application under Section 151 of CPC and this order has been impugned by the plaintiff in CM(M) No. 135/2021, filed in February, 2021. The plaintiff has therefore on his own showing been out of possession, since 16.05.2015.

7. In view of the order dated 30.11.2019, the Trial Court vide orders dated 25.02.2020, 29.10.2020, 04.02.2021 and 16.03.2021 called upon the



plaintiff to argue on the issue on maintainability of the suit for injunction in its present form considering the fact that the plaintiff is admittedly not in possession of the suit property presently.

8. The plaintiff sought a stay of the proceedings before the Trial Court in CM(M) No. 135/2021 and vide order dated 06.04.2021, the stay was granted by this Court.

Contentions of the defendant

9. Learned counsel for the defendant seeks to assail the impugned order dated 04.09.2018 in CM(M) 1422/2018 dismissing the application filed under Order XII Rule 6 of CPC on the following grounds:

9.1. He states that as per the averments made in the plaint, the suit property (i.e., lower ground floor) were allegedly let out to the plaintiff in the year, 2002. He states as per the identity card issued by the Election Commission of India ('Voter card') to the plaintiff; the plaintiff was aged fourteen (14) years in 2002 and therefore, being a minor could not have entered into a valid tenancy agreement. He states that since no written rent agreement has been filed in the Trial Court till date (2023), it is to be presumed that the tenancy alleged by the plaintiff is an oral tenancy. He states that a minor cannot enter into a valid and binding oral tenancy.

9.2. He states that with the plaint no rent agreement or rent receipt or proof of payment of rent has been annexed by the plaintiff. He states that there is no document evidencing that the plaintiff was inducted as a tenant. He states that a mere assertion in the plaint alleging that he is a tenant is not sufficient for maintaining a suit for injunction against the owner of the suit property.

9.3. He states that the statement of the plaintiff recorded under Order X



CPC on 11.10.2013, wherein the plaintiff has stated that he paid a sum of Rs. 2,50,000/- (in cash) to the defendants towards security is not corroborated with any evidence of the source of the funds and the payment thereof. He states that the said security amount is alleged to have been paid in the year, 2003 and 2005, when admittedly, the plaintiff was still a minor.

9.4. He states though the suit was instituted in November, 2011, even after passage of 12 years no document has been filed before the Trial Court evidencing the relationship of landlord and tenant or the possession of the plaintiff as a tenant.

9.5. He states that plaint was initially rejected by the Trial Court vide order dated 14.11.2014; however, the said order was reversed by the Appellate Court on 27.05.2015. He states that however, in the interregnum admittedly, the tenant has lost possession of the suit property and therefore, he cannot continue to maintain the present suit for injunction. He states that the Court in exercise of its power under Section 151 CPC can dismiss a suit which has become infructuous.

9.6. He states that CM(M) No. 135/2021 filed by the plaintiff impugning the order dated 30.11.2019 is barred by delay and laches. He states that the Trial Court has called upon the plaintiff to argue on the maintainability of the suit for injunction by separate orders dated 25.02.2020, 04.02.2021 and 16.03.2021; however, the plaintiff has failed to address the arguments and pay the costs imposed by the Trial Court. He states since the plaintiff is admittedly not in possession of the suit property, the suit for injunction is not maintainable and has become infructuous.

Contentions of the plaintiff

10. The learned counsel for the plaintiff relies upon the interim order



dated 08.06.2012 passed by the Trial Court directing the defendants to restore the possession of the plaintiff and the order dated 27.08.2012 passed by the High Court confirming the said order.

10.1. He states that the Trial Court failed to appreciate that the operation of the order dated 14.11.2014 dismissing the suit was stayed by the Appellate Court on 22.11.2014. He states that, however, the defendants recovered the possession of the suit property (i.e., lower ground floor) illegally on 26.11.2014 and 16.05.2015. He states that the said action of the defendant is illegal and contrary to the stay order dated 14.11.2014 granted by the Appellate Court.

10.2. He therefore, prays for restitution of possession of the plaintiff to the suit property. He admits the plaintiff has been out of possession of the suit property since 26.11.2014/16.05.2015. He states that the impugned order dated 30.11.2019 be therefore set aside.

Analysis and findings

11. This Court has heard the counsel for the parties and perused the record.

12. No arguments were addressed by the counsel for the plaintiff on the pleas raised by the counsel for the defendant with respect to the order dated 04.09.2018; significantly, he did not dispute the assertions of the defendant that as per the plaintiff's Voter card, the plaintiff was 14 years old in 2002, when the oral tenancy is stated to have been created.

13. Therefore, the admitted facts between the parties are as under:

13.1. The defendant is the sole and absolute owner of Shop No. G-50, which includes the suit property.

13.2. The suit has been filed by the plaintiff in November, 2011 seeking



injunction against dispossession and interference in entering the suit property.

13.3. The application filed by the plaintiff seeking restoration of possession was dismissed on 30.11.2019.

13.4. The plaintiff has not been in possession of the suit property and has not been carrying on business at the suit property for past eight (8) years atleast since 26.11.2014/16.05.2015.

13.5. The plaint was initially rejected under Order VII Rule 11 CPC on 14.11.2014 and the appeal filed by the plaintiff before the Trial Court on 22.11.2014 was allowed vide judgment dated 27.05.2015. Pertinently, no plea was raised before the Appellate Court that the plaintiff has been dispossessed in the interim period of on 26.11.2014/16.05.2015.

13.6. The plaintiff's stand is that all his goods have been removed from the suit property on 26.11.2014/16.05.2015.

13.7. The application seeking restoration of possession was filed by the plaintiff before the Trial Court in November, 2015 (one year later) and remained content with its pendency without grant of any relief. The said application was dismissed by the Trial Court vide order dated 30.11.2019.

13.8. In the meantime, the Trial Court raised the issue on maintainability of the suit for injunction on 25.02.2020 and 04.02.2021 in view of the admitted dispossession. The Trial Court in view of the subsequent event of dispossession vide order dated 25.02.2020 observed that the plaintiff in order to maintain these proceedings would be required to amend the pleadings. However, the plaintiff has elected not to amend the plaint. It was at this stage that the plaintiff elected to file the present petition impugning the order dated 30.11.2019 on 10.02.2021.



14. Pertinently, it is the stand of the defendant that the plaintiff has not been in possession of the suit property at any time even prior to the filing of the suit and he has denied that the plaintiff was dispossessed on 26.11.2014 or 16.05.2014 as alleged.

15. In the opinion of this Court, even if the defendant's stand is ignored, the plaintiff's inaction in raising the issue of his alleged dispossession on 26.11.2014/16.05.2015 before the Appellate Court which had protected his possession vide order dated 14.11.2014 does not give credence to the facts alleged by the plaintiff. In the facts of this case, the application filed by the plaintiff under Section 151 CPC in November, 2015 itself suffered from delay and laches and was rightly dismissed by the Trial Court. The delay in filing the said application belies the allegations of forcible dispossession. Even a suit under Section 6 of the Specific Relief Act, 1963 cannot be maintained, if the dispossession is beyond six (6) months.

16. In the aforesaid circumstances, where the plaintiff has been out of possession for past eight (8) years since 26.11.2014/16.05.2015, his lack of initiative in amending the suit to seek the relief of possession evidences that the present litigation is being pursued as a luxury litigation.

17. Though, the suit was filed in the year 2011 and there was a direction of the Appellate Court vide order dated 27.05.2015 to the Trial Court for expeditious disposal of the suit within six (6) months; the plaintiff has not taken any step to proceed with the trial despite passage of six (6) years. Issues have also not been framed in the suit. It is therefore, evident that the plaintiff is not diligent about prosecuting his suit.

18. In these proceedings in CM(M) No. 135/2021 as well, the plaintiff sought a stay of the proceedings before the Trial Court on 06.04.2021 and



has thereafter remained content with the stay. It is therefore, evident that the plaintiff is not interested in the final outcome of the suit and is pursuing the suit for interim reliefs which in the facts of this case has become infructuous as discussed hereinafter.

19. In the aforesaid circumstances, the CM(M) 135/2021 which seeks to impugn the order dated 30.11.2019 is dismissed. Interim order dated 06.04.2021 stands vacated.

CM(M) 1422/2018 (the petition filed by the defendant landlord)

20. The plaintiff on 21.11.2011 filed the suit for permanent injunction restraining the defendant from dispossessing the plaintiff from the suit property. It is averred in the plaint that the suit property was taken on rent in the year 2002. It is an admitted case that there is no written agreement of tenancy executed between the parties. The plaint itself is brief and runs into six (6) pages, wherein the relevant portion reads as under:

“1. That the plaintiff is carrying his business of selling gift items, deodorants, artificial jewellery etc. in the name and style of M/s Archies Gift Shop from lower ground floor of Shop No. G-50 (Lower ground floor) Vardhman Market, West enclave Pitampura, New Delhi 110034 more particularly shown in red in the site plan attached herewith. The plaintiff is the tenant at the said shop since year 2002 and is paying monthly rent @1200/- per month and the plaintiff also paid a sum of Rs. 2,50,000/- as security to the defendant at the time of taking the premises on rent. The electricity charges are paid by the plaintiff to the defendant as per the readings in the sub-meter installed at the said shop.

2. That the defendant is in possession of the upper ground floor of the said shop from where he is carrying his business and there is one common pathway/shutter/entrance to enter into the shop. That since year 2002 when the plaintiff took the said shop on rent the market was not doing well and there were no customers in the market due to which the defendant had no problem with the plaintiff and also the plaintiff is regularly paying the rent to the defendant till today.”

(Emphasis supplied)

21. The averment with respect to payment of monthly rent has not been



substantiated with any document even though the alleged relationship of landlord and tenant came into existence in the year 2002 and continued until November, 2011(i.e., for 9 years). Though the suit has been pending from the year 2011 to 2023, however, no documents in support of the claim of the tenancy has been placed on record. For instance, no rent agreement, no rent receipts, no proof of payment of rent or the security deposit has been placed on record.

22. Further, in the statement recorded by the Trial Court under Order X of CPC, the plaintiff admits that he has no proof of payment of utility bills such as electricity, water or telephone. There is no document evidencing his possession in the capacity of a tenant in the suit property. For instance, the plaintiff has also not placed on record any license issued by the statutory authorities Shop and Establishment Act, 1954.

23. On the other hand, the defendant has stated that the plaintiff was engaged by him as an employee to assist him in managing his shop and it is in this capacity that the plaintiff was permitted entry in the suit property. Further, it has also come on record that there is a single common shutter for Shop No. G-50, which consists of upper ground floor and lower ground floor. In view of the same, it is evident that there is no separate, independent and exclusive access for the lower ground floor and also gives credence to the submission of the defendant that he was surprised to learn that the plaintiff has made duplicate keys for opening the shutter which led to the disputes between the parties. In these facts, the suit property i.e., lower ground floor seems incapable of being let out separately and independently.

24. In this background the judgments of the Supreme Court in ***Maria***



Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370 and *A. Shangumam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430, become relevant. In these judgments, the Supreme Court while recognising the increasing trend of false claims by employees/caretakers/servants has cautioned that the pleadings have to be carefully discerned to ascertain the entitlement of the party who is seeking relief of continuing in possession.

24.1. The Supreme Court in *Maria Margarida Sequeira Fernandes* (Supra) has held as under:

“60. The aforementioned two decisions of the US Supreme Court re-emphasised and reiterated the importance of pleadings.

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68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession-whether he purchased the



property or inherited or got the same in gift or by any other method;

- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;
- (h) **If taken on rent, licence fee or lease-then insist on rent deed, licence deed or lease deed;**
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;
- (j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. *All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.*

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74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. *On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case."*

(Emphasis supplied)

24.2. Further, the Supreme Court in **A. Shanmugam** (Supra), while referring to the judgment in **Maria Margarida Sequeira Fernandes** (Supra) has observed as under: **(26, 27 28, 29 and 43)**

"26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.



27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered.

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43.8. The protection of the court can be granted or extended to the person who has a valid subsisting rent agreement, lease agreement or licence agreement in his favour."

(Emphasis supplied)

25. In the facts of this case, the plaintiff has not placed on record any documents in support of his claim of creation of tenancy and payment of rent. The plaintiff has admitted that he is not in possession of the suit property at least since 26.11.2014/16.05.2015. Thus, before any relief of possession can be granted to the plaintiff tenant would have to prove the existence of the tenancy in his favour.

25.1. The tenant has not placed on record any documents such as electricity bill and water bill in his name or proof of payment of the said utility bills in his name, which would have evidenced his possession as a tenant in the suit property.

25.2. Thus, in addition to the fact that there are no documents evidencing a claim of tenancy, there are also no documents to evidence plaintiff's claim of possession as a tenant from 2002 to 2011.

26. Therefore, in the facts of this case, except for bare averments that the



plaintiff was a tenant in the premises, there is no shred of documentary evidence placed on record in the last 10 years of trial despite ample opportunities to show that the possession of the plaintiff in the suit property was in capacity as a tenant.

26.1. On the other hand, the presence of the plaintiff in the suit property has been reasonably explained by the defendant by stating that he had employed the plaintiff as a helper to assist him in the Shop and therefore, his presence in the property was duly explained.

27. In addition, in the facts of this case, since as per the Voter card of the plaintiff, he was fourteen (14) years old in 2002 i.e., on the date of his alleged induction as a tenant, the entire plea of tenancy becomes illegal. The oral agreement of tenancy with a minor is void in law as per S. 11 of the Contract Act, 1872 and Section 7 of the Transfer of Property Act, 1872. The relevant sections read as under:

“11. Who are competent to contract.—Every person is competent to contract who is of the age of majority according to law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”

“7. Persons competent to transfer.—Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.”

27.1. Thus, the plea of tenancy set up in the plaint being void ab initio even on the said plea of tenancy was not maintainable.

28. Therefore, the pleadings and documents filed by the plaintiff in this case as per the test laid down by the Supreme Court in ***Maria Margarida Sequeira Fernandes*** (Supra) and ***A. Shanmugam*** (Supra), clearly does not



show sufficient facts which would prima facie evidence that the plaintiff was a tenant in the suit property.

29. In view of the law settled by the Supreme Court in ***Maria Margarida Sequeira Fernandes*** (Supra) and ***A. Shamgumam*** (Supra), the Trial Court is enjoined with a duty to examine the pleadings and the documents filed in support thereof to determine if it gives rise to any issue which needs determination; however, if no issue arises, then the Trial Court has the power to reject such a claim.

30. The aforesaid facts coupled with the fact that the plaintiff has failed to address arguments on the maintainability of the plaint in its present form before the Trial Court or amend his pleadings after his admitted dispossession in the year 2014/2015, evidences that the plaintiff does not have in his possession evidence to prove its claim of tenancy. The police complaint filed by the plaintiff for the alleged dispossession on 16.05.2015 and removal of his goods has been closed; it is not evident from record that if the plaintiff has pursued the criminal complaint. The continuation of this suit for permanent injunction is like flogging a dead horse.

31. In these facts, the continuation of the suit for permanent injunction, which has even otherwise become infructuous and is liable to be dismissed under Section 151 of CPC as held by the Supreme Court in ***Shipping Corporation of India Ltd. v. Machado Brothers & Ors., (2004) 11 SCC 168***. The relevant extract of the said judgment reads as under:

“31. For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the Court, an interest of justice requires that such suit should be disposed of as having becoming infructuous. The application under Section 151 CPC in this regards is maintainable.”



The reasons stated for dismissing CM(M) 135/2021 equally apply for concluding that the plaintiff is not diligent in pursuing this suit as even the plaintiff is aware that the suit has become infructuous.

32. In the facts of the case as noted hereinabove, no issue arises for consideration in the absence of documents in support of the pleading and especially the subsequent event of the plaintiff's admitted loss of possession of suit property as far back as on 26.11.2014/16.05.2015. Therefore, this Court is of the opinion that the application of the defendant filed under order XII Rule 6 of CPC seeking dismissal of the suit deserves to be allowed and accordingly the impugned order dated 04.09.2018 passed by the Trial Court is set aside. The suit no. 535045/2016 pending before the Civil Judge, North District, Rohini Courts, Delhi, is dismissed as having become infructuous on account of the subsequent events. Decree sheet be prepared accordingly.

33. Interim orders stand vacated.

34. No order as to costs.

35. The CM(M) No. 1422/2018 is disposed of. Pending applications, if any, stand disposed of.

36. The registry is directed to forward a copy of this order to the Trial Court for its record and for passing appropriate orders for consignment of suit record.

MANMEET PRITAM SINGH ARORA
(JUDGE)

SEPTEMBER 26, 2023/hp/aa