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

+ **C.R.P. 66/2024**

SMT USHA DEVI & ORS. Petitioners

Through: **Mr. Prashant Vaxish, Adv.**

versus

SMT SUMAN BHARDWAJ Respondent

Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
15.02.2024

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1. This hearing is being conducted through hybrid mode.

CM APPL. 9185/2024 (Ex.)

2. Allowed, subject to all just exceptions.

3. The application stands disposed of.

C.R.P. 66/2024 and CM APPL. 9184/2024 (Stay)

4. The petitioner, who is the defendant in the suit, pending before the Learned Trial Court, is assailing the impugned order dated 24.11.2023 passed by the learned ADJ-02, North East, Karkardooma Courts, Delhi whereby her application under Order VII Rule 11 CPC has been dismissed.

5. Briefly stated, the respondent/plaintiff has filed a suit for partition and permanent injunction claiming that she along with defendant No.1, who is the petitioner in the present revision petition, are co-owners of the property in suit, which had been purchased by virtue of sale documents dated 26.11.1999 by her mother-in-law, late



Smt. Gopi Devi wife of late Sh. Moti Ram. It is averred that late Smt. Gopi Devi had partitioned the property and had given shares to the plaintiff and defendant No.1/petitioner with regard to which certain documents were executed but no actual partition took place. It is alleged that defendant No.1 has been creating hindrances in the actual partition of the property in question and in the suit the following reliefs are claimed:-

“(A). That a preliminary decree be passed in favour of the plaintiff and against the defendants declaring that the plaintiff has half share share in the above said property bearing No. K-21/32, (New No. K-19/34 & K-19/35) Gali No. 19, West Ghonda, Delhi – 110053, as shown in red colour in the site plan attached with the plaint and direct the defendants to give share in the said property of area measuring 150 sq yards.

(B). That a final decree be passed in favour of the plaintiff and against the defendants regarding the partition of the above said property i.e. bearing No. K-21/32, (New No. K-19/34 & K-19/35) Gali No. 19, West Ghonda, Delhi – 110053 as shown in red colour in the site plan attached with the plaint and in case this Hon’ble court comes to the conclusion that the suit property can not be partitioned by meets and bounds then the same may be ordered to be sold off at the market price prevalent in the market and the said money be divided amongst the co-owner of the suit property and half share of the same may be awarded in favour of the plaintiff.

(C) Pass a decree of permanent injunction in favour of the of the plaintiff and against the defendants thereby restraining the defendants, their agents, associates, servants, representatives and heirs etc to sell the above said suit property No. Bearing No. Bearing No. K-21/32, (New No. K-19/34 & K-19/35) Gali No. 19, West Ghonda, Delhi – 110053 as shown in red colour in the site plan attached with the plaint and also restrained the defendants from dispossessing the plaintiff from suit property i.e. part portion of property bearing No. K-21/32, (New No. K-19/34 & K-19/35) Gali No. 19, West Ghonda, Delhi – 110053 as shown in red colour in the site plan attached with the plaint, without due process of law.

(E). Any other relief which this Hon’ble court may deem fit and proper under the facts and circumstances of the case may kindly be granted in favour of the plaintiff and against the



defendants.”

6. Learned counsel for the petitioner has urged that late Smt. Gopi Devi during her lifetime had clearly demarcated the property in question thereby giving the petitioner the front portion of the property in question measuring about 80 sq. yards, whereas, the rear/back portion in the same property measuring 75 sq. yards had been vested with the respondent/plaintiff. It would be relevant to extract the reasons given by the learned Trial Court while dismissing the application under Order VII Rule 11 CPC, which read as under:-

“6. With respect to the provision of Order VII Rule 11 of Code of Civil Procedure, it is to be noted that the court must give a meaningful reading to the plaint and if it is manifestly vexatious or meritless in the sense of not disclosing a clear right to suit, the court may exercise its power under Order VII Rule 11 of the CPC. However, in a case where the validity of a particular document itself is under challenge, the same cannot be considered and decided in an application under Order VII Rule 11 CPC. Also, it is only the facts pleaded in the plaint which are to be taken into account and if on the basis of those facts any of the infirmities enumerated in Rule 11 of Order VII CPC appears then alone the plaint is liable to be rejected. In *Dahiben vs. Arvinbhai Kalyanji Bhanusali*, (2020) 7 SCC 366, the Hon’ble Supreme Court inter alia held that the remedy under Order VII Rule 11 CPC is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. It is a settled proposition of law that while disposing of an application under Order VII Rule 11 CPC certain pre-requisites are to be considered; *firstly*, the averments made in the plaint alone have to be considered and not defence of the defendant *secondly*, the rejection of plaint should be sought under any of the grounds as stated in the Rule 11 of Order VII CPC. To be more specific for adjudication of application under Order VII Rule 11 CPC, Court cannot look beyond the plaint and the documents relied upon the plaintiff. Defendant number 4 is basically requesting the rejection on the ground as he is claiming that suit property was already transferred to him by late owner. The contention of the



defendant as such seems not to have bearing in deciding the present application as it may be defence of the defendant which as per the scheme of the Code of Civil Procedure cannot be considered for rejection of plaint. Even otherwise, it is basically the mixed question of law and facts for which evidence is required. Therefore, in the totality of the circumstances, the present application is devoid of merits and same deserves dismissal. Dismissed accordingly.

7. Nothing stated herein above shall tantamount to expression of opinion on the merits of the case. ”

7. *Ex-facie*, the plea raised by the learned counsel for the petitioner cannot be considered to be falling within the scope and ambit of Order VII Rule 11 CPC. Although, previously a suit for partition was filed by the late husband of the plaintiff bearing CS No. 78/2017 and the same had been withdrawn, no effective partition of the property by metes and bounds had taken place. The plea of the petitioner that Smt. Gopi Devi had conducted actual partition during her lifetime and the suit is without cause of action cannot be considered as that would amount to travelling beyond the pleadings and the defence put forth by the petitioner/defendant can not be considered at this stage.

8. Further, the documents which are being relied upon by the petitioner/defendant cannot be considered at this stage in considering the application under Order VII Rule 11 CPC and needless to state that there are raised certain triable issues, which could only be determined after the parties have adduced their evidence.

9. In view of the foregoing discussion, the present revision petition is dismissed.

10. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case. This order is passed without prejudice.



11. A copy of this order be sent to the learned Trial Court for information and record.

FEBRUARY 15, 2024
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DHARMESH SHARMA, J