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

+ CM(M) 66/2021

CHETAN SHARMA & ANR.

..... Petitioners

Through: Ms. Arati Mahajan with Ms. Shriya
Sharma, Advocate.

versus

K.T PUNNOOSE

..... Respondent

Through: Ms. Maheravish Rein, Advocate.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

21.03.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 06.03.2020 passed by the learned Additional District Judge -02, East District, Karkardooma Courts, New Delhi (hereinafter as “Trial Court”) in Civil Suit bearing no. 781/2016 titled as “*Gulab Sharma v. Chetan Sharma*” whereby the learned Trial Court dismissed the application under Order VII Rule 11 of Code of Civil Procedure, 1908 (“CPC”) filed by the petitioners herein. The petitioners are the defendants in the suit pending adjudication before the learned Trial Court. .

2. Gulab Sharma filed a suit against the petitioners for possession along with consequential relief of recovery, future damages and permanent injunction in 2014.



3. Petitioner amended its suit and subsequently, on 03.04.2017, a second application for amendment of the suit under Order VI Rule 17 CPC was filed by the plaintiff. As per petitioner, the second amendment was sought to change the very nature of the suit, in the said amendment, plaintiff/respondent stated that the owner of the suit property was changed to be K.T Punnoose, respondent herein. It was stated that as he was an old person, he had appointed Gulab Sharma (erstwhile plaintiff in the suit) as his attorney by way of General Power of Attorney (“GPA”) dated 05.11.2014. The petitioners tooth and nail opposed the said application.
4. Vide order dated 08.08.2017, learned Trial Court allowed the said amendment subject to cost of Rs. 5000/-. Subsequently, issues were framed vide order dated 30.11.2017.
5. Notably, an application was moved on behalf of the petitioners herein before the learned Trial Court under Order VII Rule 11 CPC seeking dismissal of the suit being not maintainable. Learned Trial Court vide impugned order dated 06.03.2020 dismissed the said application.
6. Learned counsel for the petitioners submits that the application under Order VII Rule 11 CPC was erroneously considered meritless by the learned Trial Court. The learned Trial Court ought to have appreciated that the instant suit ought to have been filed on behalf of respondent through his alleged GPA Holder, Gulab Sharma appointed vide GPA dated 05.11.2014 whereas as per the respondent himself, he had sold off the suit property in 2005 itself and hence could by any means have not executed any GPA dated 05.11.2014 with respect to the said already sold property.
7. Learned counsel for the petitioners submits that as per the amended plaint which was filed on 03.04.2017, it has been alleged that Gulab Sharma



is not the owner of the property in question but rather he is simply the GPA of the respondent.

8. Learned counsel for the petitioners submits that in the cross examination dated 24.02.2018, respondent who is examined as PW-1 deposed that he has already sold the property in question in the year 2005 and also stated that for the last ten years, he has not visited the suit property. However, he has deposed that he is not the owner of the property in question and therefore, according to the cross examination of PW-1, respondent, is neither the owner of the suit property nor he is claiming any relief of recovery of possession of the property in question. Therefore, the suit for recovery and possession cannot be tenable at all and it is prima facie a case of suit being liable to be dismissed under order VII rule 11 CPC.

9. Learned counsel for the petitioners further submits that there is a clear contradiction in the initial suit where Gulab Sharma claims to be the owner of the suit property and in the amended suit wherein respondent is stated to be the owner of the suit property. Thus, the so called amended plaint is based on a totally different cause of action and cannot be considered as an amendment to the original suit and hence also is prima facie non maintainable in the present form and liable to be dismissed under Order VII Rule 11 CPC.

10. The allegations were controverted on behalf of the respondent submitting that the application moved on behalf of the petitioner does not fall within the four corners of Provision of Order VII Rule 11 CPC. Probably, the petitioner wants to contend that the suit is without cause of action, which for the purpose of Order VII Rule 11 CPC has to be seen in accordance with the averments raised in the plaint.



11. Order 7 Rule 11 CPC reads as follows:

“11. 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 returned 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;

1[(e) where it is not filed in duplicate;]

2[(f) where the plaintiff fails to comply with the provisions of rule 9:]

3[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.]”

12. It is trite in law that a suit under Order VII Rule 11 CPC can be rejected if the defendant is able to show one of the grounds under Order VII Rule 11 CPC as mentioned herein above for which only the averments in the plaint are to be considered and not the defence raised by the defendant in the written statement and least of all the deposition made by the witnesses recorded during the trial.

13. After reading, the plaint in itself discloses cause of action. Moreso, before filing the present application i.e. after conclusion of the cross-examination of the petitioners, the petitioners have never raised any objections with respect to the petition being devoid of cause of action. The learned Trial Court on 13.11.2017 had framed the issues with the consent of the petitioners and specifically issue no. 4 was framed, which adequately



covers the contentions raised by the petitioners.

14. Issue no. 4 reads as under:

“d) Whether the suit filed by the attorney of plaintiff is not maintainable and that he has no locus standi to file the present suit? OPD.”

15. The issue raised by the petitioner can be decided only by leading evidence of the parties. In so far, the arguments with respect to the amendment of the petition is concerned, the said order have attended finality as same were never challenged by the petitioners, therefore, same cannot be made basis to challenge the impugned order.

16. Accordingly, the petitioners have failed to point out any illegality in the impugned order, which suffers from no infirmity. The petition is devoid of merits and is consequently dismissed.

SHALINDER KAUR, J.

MARCH 21, 2024/ss/dp