



2024:DHC:1973



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

% **Reserved on: 18th December, 2023**

Pronounced on: 12th March, 2024

+ **C.R.P. 8/2021**

MS. REMA GUPTA

..... Petitioner

Through: Mr. Manish Vashisht, Senior
Advocate with Mr. Vanshay Kaul,
Mr. Vedansh Vashisht and Ms.
Harshita Nathrani, Advocates

versus

MAHINDER LAL

..... Respondent

Through: Ms. Madhulika Sarin, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

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 petitioners seeking the following reliefs:

"(A) Pass appropriate order(s) or direction(s) thereby setting aside the order dated February 14, 2020 passed in Suit No. 610933 of 2016 titled as "Mahinder Lal V. Vidya Sagar & Ors." by Learned Additional District Judge - West Delhi, Tis Hazari Court, Delhi and thereby reject the Complaint filed by Respondent No. 1 in Suit no. 610933 of 2016;

(B) Pass such other or further order(s) as it may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

Signature Not Verified

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By: DAMINI YADAV
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C.R.P. 8/2021

Page 1 of 44



2024:DHC:1973



FACTUAL HISTORY

2. The details of the parties in the instant dispute is as follows:
- a. Ms. Rema Gupta, i.e., the petitioner no. 1 is stated to be the daughter of Late Sh. Ish Aneja (also mentioned as Late Sh. Ish Kumar at some places in the material on record).
 - b. Ms. Kusum Aneja, i.e., the petitioner no. 2 is stated to be the widow of Late Sh. Ish Aneja.
 - c. Sh. Aman Aneja, i.e., the petitioner no. 3 is stated to be the son of Late Sh. Ish Aneja.
 - d. Sh. Mahinder Lal, i.e., the respondent no. 1 is stated to be the son of Sh. Kundan Lal.
 - e. Late Sh. Vidya Sagar, i.e., the respondent no. 2 is stated to be the son of Late Sh. Devi Dayal Aneja through his legal heirs Smt. Savitri Aneja (widow), Sh. Ashish Aneja (son), Ms. Benu Kalhan (daughter), Ms. Renu Manchanda (daughter), pro forma respondent.
 - f. Sh. Prem Sagar, (pro forma respondent) the respondent no. 3 is stated to be the son of Late Sh. Devi Dayal Aneja.
 - g. Late Sh. Gian Sagar, i.e., the respondent no. 4 is stated to be the son of Late Sh. Devi Dayal Aneja through his legal heirs Ms. Titly Aneja (widow), Ms. Tia (daughter), Ms. Sheena (daughter), (pro forma respondent).



2024:DHC:1973



- h. Ms. Krishna Kumari, (pro forma respondent), i.e., the respondent no. 5 is stated to be the daughter of Late Sh. Devi Dayal Aneja.
- i. Late Ms. Saroj Kumari is stated to be the daughter of Late Sh. Devi Dayal Aneja, through her legal heirs Sh. Harish Dudeja (widower), Sh. Sunny Dudeja (son), Sh. Atul Dudeja (son) (pro forma respondent).

3. As per the plaint, a plot admeasuring 200 sq.yards, bearing no. B-11, Tagore Market, Kirti Nagar, New Delhi (hereinafter “suit property”), was purchased jointly by Sh. Ish Aneja (since deceased) and Sh. Devi Dayal (since deceased), from the rehabilitation housing corporation.

4. Thereafter, Late Sh. Ish Aneja and Late Sh. Devi Dayal constructed a building jointly upon the above said land. Late Sh. Ish Aneja then moved to the United States of America and appointed Sh. Kanwal Nain as his attorney in respect of his undivided half share in the suit property vide a general power of attorney dated 24th July, 1971.

5. In the year 1999, Sh. Kanwal Nain sold the aforesaid half share of suit property to one Sh. Rajender Walia for a total sale consideration of Rs. 1.25 Lakhs on 1st March, 1999 and executed an agreement to sell, a will, a receipt and a general power of attorney as well as a special power of attorney, all dated 1st March, 1999 in favour of Sh. Rajender Walia. The said half share of the suit property includes one barsati, open space, along with one shop and two rooms on the back side of the ground floor.



2024:DHC:1973



6. It has been stated that Sh. Rajender Walia further sold the said undivided share for a total sale consideration of Rs. 1.35 Lakhs to one Sh. Mahinder Lal, i.e., the respondent no. 1. Sh. Rajender Walia executed an agreement to sell/purchase, a receipt, a possession letter and a registered general power of attorney as well as a special power of attorney along with a will, all dated 19th October, 2001 in favour of Sh. Mahinder Lal. After taking possession of the said share, Sh. Lal kept certain household articles/goods in the barsati on the second floor and locked the same.

7. On 19th July, 2007, when Sh. Lal visited the property, he found that the locks on the second floor were broken and that one Sh. Vidya Sagar S/o Late Sh. Devi Dayal (since deceased) has trespassed the suit property. Thereafter, during the years 2007 and 2008, Sh. Lal requested Late Sh. Sagar to partition the property by metes and bounds but the same was declined.

8. Aggrieved by the same, Sh. Mahinder Lal, i.e., the respondent no. 1/plaintiff filed a civil suit bearing suit no. 610933/2016 seeking a decree of partition in respect of his share and possession of the same along with permanent injunction against all the legal heirs of Late Sh. Devi Dayal (owner of the other half of the suit property).

9. In the meanwhile, the petitioners' predecessor-in-interest namely Late Sh. Ish Aneja moved an application under Order I Rule 10 of the CPC, seeking his impleadment in the above said suit and the same was allowed vide order dated 4th November, 2009.



2024:DHC:1973



10. Subsequently, the petitioner's predecessor-in-interest filed an application under Order VII Rule 11 of the CPC in the above said civil suit seeking dismissal of the same on the ground of lack of cause of action. The said application was dismissed by the learned Trial Court vide order dated 14th February, 2020.

11. The petitioners who are the legal heir of Late Sh. Ish Aneja, have filed the instant civil revision petition challenging the impugned order dated 14th February, 2020 by virtue of which the application filed by the petitioners under Order VII Rule 11 of the CPC was dismissed.

PLEADINGS

12. The petitioners had filed the instant civil revision petition on 21st January, 2021 and submitted the below stated arguments:

“...A. Because Ld. Trial Court failed to appreciate the settled position of law that in a suit for partition, the court at first instance has to decide whether the Plaintiff has any ownership (share) in the suit property and thereafter advert to whether any separate possession can be granted to the Plaintiff.

B. Because the Ld. Trial Court failed to note in the instant case that based on his claim of being the owner of 50% undivided share of the suit property, the Respondent No. 1 has sought the ancillary relief of possession. Thus, it was incumbent on the Ld. Trial Court to ascertain at first instance whether the Respondent No. 1 has any ownership in the suit property when on the face of it itself, Respondent No. 1 has no legal title in the suit property.



C. Because Ld. Trial Court failed to note that despite being merely the power of attorney holder of Petitioners' predecessor-in-interest, Shri Kanwal Nain Aneja exceeded the authority granted to him under the GPA dated July 24, 1971 by declaring himself to be the owner (of 50% undivided share in the suit property) in the unregistered Agreement to Sell dated March 1, 1999 executed in favour of Shri Rajinder Walia and as such, no by Shri Kanwal Nain Aneja in favour of Shri Rajinder Walia (i.e. the Rajinder Walia Documents) stood cancelled on March 1, 1999 itself by way of registered deeds of cancellation. Hence, no right or ownership could have been conferred on Shri Rajinder Walia much less on Respondent No. 1.

H. Because Ld. Trial Court failed to hold that by virtue of Section 17 (1 A) of Registration Act, 1908, even the purported agreement to sell dated October 19, 2001 must have been registered. Without registration of the purported agreement to sell dated October 19, 2001, the same has no effect of conferring any legally valid title in the suit property on the Respondent No. 1.

I. Because Ld. Trial Court failed to hold that it was incumbent for the Respondent No. 1 to seek specific performance of the purported agreement to sell dated October 19, 2001 and establish his ownership in the suit property.

J. Because the Ld. Trial Court failed to hold that the said suit has been initiated by the Respondent No. 1 for the purpose of circumventing the onus of proving his ownership and title in the suit property.

K. Because Ld. Trial Court failed to hold that Power of Attorney is not an instrument of transfer in regard to any right,



title or interest in an immovable property. Accordingly, no ownership has been transferred to the Respondent No. 1 vide the purported power of attorney dated October 19, 2001 executed by Shri Rajinder Walia.

L. Because Ld. Trial Court failed to hold that a Will is a posthumous disposition of a property. It is not a transfer inter-vivos and thus no ownership has been transferred to the Respondent No. 1 vide the purported Will dated October 19, 2001 executed by Shri Rajinder Walia.

M. Because Ld. Trial Court failed to note that this Hon'ble Court vide its order dated July 23, 2013 has held that the very fact Shri Kanwal Nain Aneja declared himself to be the owner of 50% undivided share in the suit property in the purported agreement to sell dated March 1, 1999 despite being the power of attorney holder of the Petitioners' predecessor-in-interest prima facie shows that no valid title passed to the Respondent No. 1 (i.e. the Plaintiff in the said suit)....”

13. In response to the present petition, the respondent no. 1 has advanced arguments by way of written submissions dated 27th September, 2023, relevant portion of which is as under:

“...C. That the Revision moved by the petitioners is contrary to their case before the Ld. Trial Court and the documents relied upon by them for the purposes of their Revision and is full of concoctions and misleading facts.

D. That at no point of time, the documents of ownership dt.1.3.1999 executed in favour of Sh.Rajender Walia by the attorney of deceased Sh. Anaje were cancelled but the entire pleadings in the shape of Revision are to the same effect, (Annexure P-12 to P-14)and are contrary to Annexure P-5, wherein the deceased Ish Aneja is seeking the relief of



cancellation of ownership documents dt.1.3.1999 executed by his attorney in favour of Sh. Rajender Walia and thereafter on the basis thereof in favour of the respondent No.1 on 19.10.2001.

E. That in the year 2015, despite directions of the Ld.J.R. till the date of filing the present Revision, the petitioners failed to file even a single document in original, upon which the deceased Ish Aneja and after his death the present petitioners are placing reliance for the purposes of their defence in the case of the respondent No.1.

F. That because there was the demand of cancellation of the ownership documents by deceased Sh. Aneja, the husband and father respectively of the petitioners through his W.S.dt .6.1.2010 (Annexure P-5) and also despite directions of the Ld. J.R. in the year 2015, the deceased defendant was not caring for filing the original, the respondent No.1 filed application U/o XI R.12 CPC for production of the original thereof but instead thereof, the deceased preferred to move the application U/o VII R .11 CPC, which was dismissed vide order dt.14.2. 2020 and has been challenged through the present revision.

G . That it is pertinent to note here that on the basis of the GPA executed in favour of the deceased Kanwal Nain Aneja in the year 1971, he got the right to dispose of the suit property and was also enjoying the possession of the suit property and accordingly, in the year 1999 i.e. on 1.3.1999, he transferred the suit property against valid sale consideration in favour of Sh.Rajendr Walia, which property was later on transferred in favour of the present respondent No.1 against valid sale consideration and accordingly, the documents viz .Registered GPA, Registered Will, Agreement to Sell etc. were duly executed in his favour on 19.10.2001.he documents of erstwhile



owner Sh.Rajender Walia are of 1.3.1999 and thereafter, on the basis of the said documents, the present respondent No.1 came in picture in the year 2001 i. e. 19.10. 2001.

That S.202 of the Indian Contract Act, 1872, Amended S. 2. 53-A of The Transfer of Property Act, 1882 and the relevant provisions of Indian Succession Act are quite clear so far as the issue involved in the present case is concerned that the documents viz. GPA, Agreement to Sell, Will etc., which were/are executed prior to 24.9. 2001, the same will continue to be valid documents i.e. the documents being executed prior to 24.9. 2001 and also being in accordance with the then existing S.53-A of The Transfer of Property Act, 1882, which did not require stamping and registration of the agreement to sell and would be valid documents. S.202 of Indian Contract Act,1872 and Amended S.53 -A of The Transfer of Property Act, 1882 and the relevant provisions of Indian Succession Act....”

14. The petitioners have also filed written submissions dated 22nd September, 2023 along with compilation of judgments and the same is on record.

SUBMISSIONS

(submissions on behalf of the petitioners)

15. Learned senior counsel Mr. Manish Vashisht, appearing on behalf of the petitioners, submitted that the learned Trial Court erred in passing the impugned order as it failed to take into consideration the entirety of the facts and circumstances of the instant dispute.



2024:DHC:1973



16. It is submitted that Order VII Rule 11 of the CPC provides that a suit shall be rejected where the suit appears from the statements therein, to be barred by any law. It is further submitted that in order to decide whether there is any cause of action, it is the statement in the suit which will have to be construed.

17. It is submitted that the learned Trial Court failed to appreciate the law settled with respect to a suit for partition as per which the ownership in the suit property has to be determined first, and thereafter the issue of grant of separated possession can be taken up.

18. It is submitted that the learned Trial Court failed to consider that the respondent no. 1, claiming ownership of 50% undivided share of the suit property also sought ancillary relief for possession, therefore, it was necessary for the learned Court to first ascertain if the respondent had any ownership in the property, especially when the legal title of the property is disputed.

19. It is submitted that the learned Trial Court failed to appreciate that Sh. Kanwal Nain, while entering into an unregistered agreement of sale in favour of Sh. Rajinder Walia exceeded the authority granted to him through general power of attorney dated 24th July, 1971 by declaring himself the owner of property in question.

20. It is further submitted that the unregistered sale agreement executed in favour of Sh. Walia stood cancelled by virtue of a registered deed of cancellation dated 1st March, 1999 and thus, no ownership right was ever conferred upon Sh. Walia.



2024:DHC:1973



21. It is submitted that the learned Trial Court failed to recognize that a valid transfer of ownership in an immovable property through sale requires a deed of conveyance or sale deed and without such registered deed, no rights, title, or interest in an immovable property can be legally transferred.

22. It is submitted that the learned Trial Court failed to consider that according to Section 17 (1A) of the Registration Act, 1908, even the alleged agreement to sell dated 19th October, 2001, should have been registered. Without registration, the said agreement does not legally transfer any valid title of the suit property to the respondent no. 1.

23. It is submitted that the learned Trial Court failed to recognize that a power of attorney is not an instrument of transfer regarding any right, title, or interest in an immovable property. Therefore, no ownership was transferred to the respondent no. 1 through the purported power of attorney dated 19th October, 2001, executed by Sh. Rajinder Walia.

24. It is submitted that the learned Court below further failed to hold that it was incumbent for the respondent no. 1 to seek specific performance of the purported agreement to sell and establish his ownership. Also, that the suit was instituted by him for the purpose of circumventing the onus of proving ownership and title in the suit property.

25. It is submitted that the learned Trial Court failed to acknowledge that a power of attorney is not a document that transfers any right, title, or interest in an immovable property. Therefore, the purported power of attorney dated 19th October, 2001, executed by Sh. Rajinder Walia, did not transfer any ownership to respondent no. 1.



2024:DHC:1973



26. It is submitted that the learned Trial Court failed to recognize that a will is a postmortem disposition of property and not a transfer *inter-vivos*. Therefore, no ownership was transferred to the respondent no. 1 through the purported Will dated 19th October, 2001, executed by Sh. Rajinder Walia.

27. It is submitted that learned Court below omitted in noting that with the death of Sh. Kanwal Nain, the general power of attorney and the special power of attorney executed in favour of Sh. Rajinder Walia came to an end, and thus, Sh. Rajinder Walia could not have sought to transfer the petitioners' predecessor-in-interest in the suit property on the basis of the said power of attorney.

28. It is submitted that the plaintiff has claimed himself to be the owner in the suit property on the basis of various documents such as an agreement to sell and a will dated 19th October, 2001. It is also submitted that the learned Court below failed to appreciate that a relief of partition is only available to a co-owner and not to a person who claims a right over the property on the basis of an agreement to sell.

29. It is submitted that since Sh. Rajender Walia did not have any ownership over the suit property. Therefore, he could not have conferred/transferred any rights in the suit property to the respondent no. 1. In this regard, the learned senior counsel appearing on behalf of the petitioners placed reliance upon the judgments namely *Jasbir Singh*



2024:DHC:1973



***Chadha v. UP. Financial Corporation*¹, and *Mahabir Gape and Others v. Harbans Narain Singh and Other*².**

30. It is submitted that taking into consideration the above submissions, it is apparent that the suit filed by the respondent no. 1 seeking partition, injunction and possession does not enclose any cause of action in the plaintiff's favour. Since the plaint fails to disclose any cause of action and is contrary to the law, therefore, the plaint is liable to be rejected as no relief of partition could be granted to the plaintiff in accordance with the provision of Order VII Rule 7 of the CPC. Reliance in this regard has been placed upon the judgment of Hon'ble Supreme Court in ***Rajendra Bajoria and other vs. Hemant Kumar Jalan and Others*³.**

31. It is submitted that the reasoning given in the impugned order is perverse, arbitrary, irrational, and has no basis whatsoever in law, equity or justice.

32. It is submitted that in light of the above submissions, it is evident that the learned Court below erred in appreciating the settled position of law and hence, there is an illegality in the impugned order making it liable to be set aside.

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

¹ ILR (2008) Delhi 1321

² AIR 1952 SC 205

³ 2021 SCC Online SC 7 64



2024:DHC:1973



(submissions on behalf of the respondent)

34. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 1 vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

35. It is submitted that the learned Trial Court has taken into consideration the entire facts and circumstances and only after such due consideration, it had reached to the conclusion, whereby, it dismissed the petitioners' application under Order VII Rule 11 of the CPC.

36. It is submitted that the present revision petition is liable to be dismissed on the grounds that the petitioners have failed to bring up any substantial question of law or any wrong exercise of the provisions of law by the learned Court below.

37. It is submitted that the petitioners' contentions are baseless due to the reason that the learned Court below has exercised its jurisdiction in accordance to the settled legal propositions and there is no infirmity in the impugned order passed by it.

38. It is submitted that on the basis of the general power of attorney executed in favour of Sh. Kanwal Nain in the year 1971, he got the right to dispose of the suit property and was also enjoying the possession of the suit property and accordingly, in the year 1999 i.e. on 1st March, 1999, he transferred the suit property against valid sale consideration in favour of Sh. Rajendra Walia, and the said property was later on transferred in favour of the present respondent no. 1 against valid sale consideration and accordingly,



2024:DHC:1973



the documents *viz* registered general power of attorney, registered will, agreement to sell etc. were duly executed in his favour on 19th October, 2001. The documents of erstwhile owner Sh. Rajender Walia are of 1st March, 1999 and thereafter, on the basis of the said documents, the present respondent no. 1 came in picture in the year 2001.

39. It is submitted that the plaintiff derives his title to the suit property on the basis of the agreement to sell, will, receipt, general and special power of attorneys, all dated 1st March, 1999 executed in his favour by Sh. Kanwal Nain who is a registered general power of attorney holder of Sh. Ish Aneja, i.e., the original owner of half share of the suit property.

40. It is submitted that Sh. Rajender Walia, while transferring the ownership vide the aforementioned documents, had also transferred the possessory rights of the said portion of the suit property, i.e., one barsati, open space along with one shop and two rooms on the back side of the ground floor to him.

41. It is also submitted that the having been purchased the half undivided shares on payment of valuable sale consideration, the respondent no.1, i.e., the plaintiff is entitled to his half undivided share in the suit property. It is further submitted that the respondent no.1 was put in possession of the said portion by Sh. Rajender Walia and it is a settled law that the parties may not be owner in true sense but they can seek partition of their possessory right and hence, there arose a cause of action in respondent no. 1's favour to file the above said civil suit which was rightly decided by the learned Court below.



42. It is submitted that the present revision petition is contrary to the case before the learned Trial Court and the documents relied upon by them are filled with concoctions.

43. Therefore, in view of the submissions made above, it is submitted that instant petition being devoid of any merits may be dismissed.

SCHEME OF THE ACT

(Section 115 of the CPC – Revisional Powers of this Court)

44. At this stage, before delving into the analysis of the merits of the facts of the instant matter, it is pertinent for this Court to set out the scope of Section 115 of the CPC, under which the petitioners have challenged the impugned order before this Court. The said Section has been reproduced for reference hereunder:

“115. Revision.— [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law,*
- or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally*
or with material irregularity, the High Court may make
such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue,



2024:DHC:1973



in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

45. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court has power to exercise its jurisdiction; and (iii) that in exercising jurisdiction, the Court has not acted illegally, that is, breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.



46. In the landmark case of ***Major S.S. Khanna v. Brig. F.J. Dillon***⁴, the Hon'ble Supreme Court stated that the said Section consists of two parts, *first* prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *second* sets out the circumstances in which the jurisdiction may be exercised by the High Court. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of ***Major S.S. Khanna (Supra)*** have been reproduced herein:

“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:

(i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;

(ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and

(iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

⁴ (1964) 4 SCR 409



- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”*

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part



2024:DHC:1973



of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”

47. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

48. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity. Section 115 of the CPC, deals with the High Court’s power of revision. Briefly stated, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

49. The CPC, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and



provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Supreme Court in the judgment of ***Manick Chandra Nandy v. Debdas Nandy***⁵. The Hon'ble Court in the said judgment had observed as follows:

“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's

⁵ (1986) 1 SCC 512



application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.”

(Order VII Rule 11 – Rejection of plaint)

50. In the instant case, the dispute revolves around the petitioners’ application filed under Order VII Rule 11 of the CPC which was dismissed by the learned Trial Court vide the impugned order.

51. The petitioners had sought for rejection of the respondent’s plaint on the ground that there is no cause of action in favor of the respondent no.1 and the same has been discussed in the below paragraphs. The said provision is also reproduced herein for reference:

**“ORDER VII
Plaint**

...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;
[(e) where it is not filed in duplicate;]
[(f) where the plaintiff fails to comply with the provisions of rule 9:].....”

52. On a bare perusal of the abovementioned provision for rejection of a plaint, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC is concerned, the relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint and the said averments are germane. The Trial Court can exercise the power under Order VII Rule 11 of the CPC at any stage of the suit – before registering the plaint or after issuing of summons to the defendant, at any time before the conclusion of the trial. The provision under Order VII Rule 11 of the CPC provides for rejection of a plaint and the scope of judicial inquiry in such an application is restricted to examining the statement in the plaint.

53. Under Order VII Rule 11 of the CPC, the Court has the jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief



2024:DHC:1973



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. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of the CPC has to be on consideration of the principles laid down under the said provision and its interpretation in a catena of judgments.

54. The power with the Courts under Order VII Rule 11 of the CPC, is a radical power conferred in order to terminate any civil action at the threshold, provided, it falls under the categories prescribed within the provision. The conditions precedent to such exercise of the power are stringent and especially when rejection of a plaint is sought on the ground of limitation. Therefore, when the plaintiff claims that he gained the knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11 of the CPC.

55. The Hon'ble Supreme Court in one of its earlier judgments namely *T. Arivandandam v. T.V. Satyapal*⁶, set out the parameters that has to be kept in mind whilst adjudicating an application seeking rejection of a plaint and held as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of

⁶ (1977) 4 SCC 467



the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good...”

56. In ***Kamala v. K.T. Eshwara Sa***⁷, the Hon'ble Supreme Court while reaffirming its earlier decision of ***T. Arivandandam (Supra)*** held as under:

“..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 complaint. 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 complaint 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 complaint. For that purpose, there cannot be

⁷ (2008) 12 SCC 661



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.

40. Order 7 Rule 11(d) of the Code serves a broad purpose as has been noted in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [(2004) 9 SCC 512] in the following terms : (SCC p. 560, para 133)

“133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315] , SCC at pp. 324-35.)”

But therein itself, it was held : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

41. In C. Natrajan v. Ashim Bai [(2007) 14 SCC 183 : (2007) 12 Scale 163] this Court held : (SCC pp. 188-89, para 8)



“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510])”..”

57. Upon perusal of the above, it is inferred that the Rule 11 of Order VII of the CPC lays down an independent remedy which is available to a defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. Therefore, it is understood that with reference to Order VII Rule 11 of the CPC, the relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint and it is an obligation upon the Court dealing with such application that if on a meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under the said provision. Furthermore, if clever drafting has created the illusion of a false cause of action, it has to be nipped in the bud at by examining the contents of the plaint itself. The same has also been upheld by the Hon'ble Supreme Court in *Surjit Kaur Gill v. Adarsh Kaur Gill*⁸.

⁸ (2014) 16 SCC 125



ANALYSIS AND FINDINGS

58. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.

59. The scope and extent of the revisional powers of this Court along with the principle *qua* the rejection of a plaint have been discussed in depth in the foregoing paragraphs.

60. Petitioners herein are aggrieved by the order dated 14th February, 2020 passed by the learned Trial Court by which an application under Order VII Rule 11 of the CPC, filed by the predecessor-in-interest of the petitioners herein i.e. late Sh. Ish Aneja, who was arrayed as defendant no. 6 in the suit bearing no. 610933/2016, has been dismissed. Petitioners are the wife, son and daughter of late Sh. Ish Aneja and are Class I legal heirs. The contention in the application under Order VII Rule 11 of the CPC for rejection of the plaint was that since the plaintiff has no ownership in the suit property, the suit filed by the respondent no. 1/plaintiff seeking simpliciter partition of the suit property is not maintainable and hence, there exists no cause of action in the respondent's favour which makes the suit liable to be dismissed. It has been submitted that the plaintiff has not claimed the relief of possession or declaration of his title as co-owner. The plaintiff has filed the suit on the basis of the agreement to sell for which he has never filed any suit for specific possession or obtained any registered sale document for



2024:DHC:1973



confirmation of his ownership of the undivided half share in the property. The agreement to sell admittedly does not make the plaintiff owner and/or joint-owner of the property along with the other owners to claim relief of partition.

61. In rival submissions, the contentions advanced by the petitioners have been vehemently opposed and it has been submitted that there is no illegality or irregularity in the impugned order and the present petition is merely an abuse of the process of law. The petitioners have not put forth a single contention which would imply any material irregularity in the impugned order. The same has been passed in accordance with the settled legal principles. As per the law behind the provisions of Order VII Rule 11 of the CPC, only the averments made in the plaint are germane and on the basis of the averments made in the plaint file before it, the learned Trial Court rightfully concluded that there is a cause of action in the plaintiff's favour to institute the above said civil suit.

62. The petitioners vide the application under Order VII Rule 11 of the CPC had sought rejection of the plaint on the ground that the suit of the plaintiff is without any cause of action. Learned Trial Court has, however, held that even if the plaintiff did not have ownership in the suit property, he was competent to seek partition of his possessory right. Perusal of the below extracted paragraphs of the impugned order states that the learned Trial Court had taken into account the entire facts and circumstances, and after due deliberation of the same, it reached to the conclusion that the application



of the petitioners seeking rejection of the plaint does not hold any merit.

Relevant extracts of the impugned order are as under:

“...1. By this order, I shall decide application moved by defendant under Order VII Rule 11 CPC seeking rejection of present plaint. Brief essential facts as per plaint are that the property i.e plot measuring about 200 sq. yards bearing no. B-11, Tagore Market, Kirti Nagar, New Delhi (herein referred to as 'suit property') was purchased by Sh.Ish Kumar and Sh. Devi Dayal jointly from Rehabilitation Housing Corporation.

2. As per the plaintiff, Sh. Ish Kumar and Sh. Devi Dayal constructed the building jointly. Plaintiff has further averred that Sh. Ish Kumar by registered GPA dated 24.07.1971 appointed Sh. Kanwal Nain as attorney in respect of his undivided half share in the suit property. Plaintiff further avers that Sh. Kanwar Nain sold the aforesaid half share of suit property to Sh. Rajender Walia for total sale consideration of Rs. 1.25 Lacs on 01.03.1999 and executed an agreement to sell, a WILL, receipt and GPA and Special Power of Attorney all dated 01.03.1999 In favour of Sh. Rajender Walia in this regard.

*3. As per plaintiff, Sh. Rajender Walia also put in possession of second floor of the property i.e. one barsati, open space alongwith one shop and two rooms on back side of ground floor. Plaintiff goes on to aver on to that Sh. Rajender Walia further sold the said undivided share in the property to him for total sale consideration of Rs. 1.35 Lakhs and executed agreement to sell/ purchase, receipt, possession letter and registered General Power of Attorney, Special Power of Attorney and WILL, all dated 19.10.2001 in faovur of plaintiff. **As per plaintiff, he was also put into physical possession of one barsati and entire open space on second floor alongwith one shop and two rooms on ground floor. Plaintiff claims to***



have become owner of said share of property on purchase of same. As per plaintiff, he put his certain household articles/goods in the barsati on second floor and locked the same.

4. Defendants are stated to be descendants of Sh. Devi Dayal (owner of half of the suit property) and residing at first floor. It is stated that on 19.07.2007, when plaintiff went to said property, he found locks on the second floor were broken and defendant no.1 has trespassed in the suit property. It is further stated that plaintiff has requested the defendants to partition the property by metes and bounds but defendant no.1 avoided the same on one pretext or other. It is further averred that defendant claimed that he is exclusive owner of the entire share in Devi Dayal's property. It is further averred that plaintiff is not aware about the exact status in respect to half share of Devi Dayal as to who is the actual owner of said half share.

5. It is further averred that on 08.02.2009, plaintiff again approached the defendant and requested him to partition the property in question on which defendant refused to carryout partition. It is further averred that having purchased half undivided shares on payment of valuable sale consideration, the plaintiff is entitled to his half undivided shares in suit property.

6. On these averments, plaintiff has filed the present suit seeking a decree of partition in respect of his share and possession of same. Plaintiff further seeks decree of permanent injunction thereby restraining the defendants from creating any third party interest in the suit property In any manner in respect of suit property.

7. On being served with summons, defendant appeared and filed their written statement. Present application has been filed



under Order VII Rule 11 CPC by Sh. Ish Kumar who was impleaded as defendant no. 6 vide order dated 04.11.2009. Vide said application, defendant seeks rejection of the plaint on the ground that suit of plaintiff is without cause of action.

*8. It is settled law that a suit under Order VII Rule 11 CPC cannot be rejected on the basis of allegations made by defendant in his written statement or in an application for rejection of plaint. Rather the court has to read the plaint to find out whether it discloses any cause of action and if it does, then plaint could not be rejected by court exercising the powers under Order VII Rule 11 CPC. However, if plaint does not disclose any cause of action then the plaint shall be rejected under Order VII Rule 11 (a) CPC. Reliance is placed upon : **Mayar (H.K) Ltd vs Owners & Parties, Vessel M.V Fortune Express, AOR 2006 SC 1828.** Similarly, Hon'ble Apex court in **Salim Bhai vs State of Maharastra 2003SCC 157** has observed that the relevant facts which needs to be looked into to decide an application under Order VII Rule 11 CPC are the averments in the plaint.*

9. In the instant case, plaintiff seeks the relief of partition, possession and injunction claiming himself to be the owner to the extent of half share of the suit property. As per the plaintiff, he purchased the suit property from Sh. Rajender Walia for a sale consideration of Rs. 1.35 Lacs after execution of agreement to sale/purchase, receipt, possession letter, registered power of attorney and special power of attorney and WILL dated 19.10.2001 in favour of plaintiff and he was also put in physical possession of one barsati, open space alongwith one shop and two rooms on the back side of ground floor

10. As per the case of plaintiff, Sh. Rajender Walia, drives his title to the suit property on the basis of an agreement to sell, WILL, receipt, GPA and SPA all dated 01.03.1999 executed in



his favour by Sh. Kanwar Nain who is registered GPA holder of Sh. Ish Kumar , the original owner of half share of the suit property.

11. Ld. Counsel for defendant has vehemently argued that by execution of said documents by Sh. Kanwar N ain in favour of Sh. Raj ender Walia, no valid title and ownership has passed to latter so as to confer any ownership rights upon him. As per the counsel, since no valid title or ownership passed in favour of Sh. Rajender Walia, therefore, he could not have transferred any rights in the suit property to plaintiff by execution of the documents viz agreement to sell, SPA, GPA, WILL and receipts. Ld. Counsel has relied upon judgments passed in case titled as (1) Jiwan Das vs Narain Das etc ; 1981 Rajdhani Law Reporter 596 and (2) MAC Associates vs SP Singh Chandel & Anr; RFA 518/2011 decided on 07.02.2013.

12. The contentions of Id. Counsel appears to carry some force, however, same lose its sheen on closer scrutiny of facts in the instant case. Even if it is assumed that plaintiff has not become an owner in true sense by execution of documents in nature of GPA, SPA, WILL, Agreement ot sell, reciept etc, then also it cannot be said that the plaint does not disclose any cause of action. Apart from claiming ownership, plaintiff has also averred that Sh. Raj ender W alia was put in possession of 2nd floor of the property i.e one barsati, open space alongwith one shop and two rooms on the back side of ground floor at the time of sale. Further as per the plaintiff, Sh. Rajender Walia, while transferring the ownership vide documents VIZ agreement to sell, receipt, GP A, SP A, possession letter had also transferred the possessory right of the said portion of the suit property i.e. one barsati, open space alongwith one shop and two rooms on the back side of ground floor to him. Plaintiff has specifically averred that he was put in possession of said portion by Sh. Rajender Walia. It is settled law that parties may not to be



*owner in true sense but they can seek partition of their possessory right. In this regard, the decision of **Surjit Singh vs Ekta Gulati, 2012 SCC Online Del 4233** can be referred to wherein it was observed:.....*

13. Therefore, in view of the settled law position and since plaintiff is also claiming possessory right over the suit property, it cannot be said that the plaint does not disclose any cause of action. Therefore, the application moved by defendant seeking rejection of plaint stands dismissed....”

63. Before adverting into the merit of the instant case, it is imperative to set out the law settled behind the term ‘cause of action’ in a plaint and rejection of the said plaint in the event it fails to disclose a cause of action.

64. In **Popat and Kotecha Property v. State Bank of India Staff Assn**⁹, the Hon’ble Supreme Court decided that while dealing with an application filed under Order VII Rule 11 of the CPC, the basic question that is needed to be dealt with is whether a real cause of action has been set out in the plaint or something pure illusory has been stated therein in order to avoid the grounds for rejection. The relevant paragraphs of the said judgment are as under:

“13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial

⁹ (2005) 7 SCC 510



court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. *In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.*

16. *The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)*

17. *It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.*

18. *In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a*



whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

22 [Ed. : Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./92/2005 dated 22-9-2005.] . There is distinction between “material facts” and “particulars”. The words “material facts” show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between “material facts” and “particulars” was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.* [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)]...”

65. The whole purpose of looking into the averments along with documents is to ensure that the plaintiff approaching the Court should not be creating an illusory cause of action by adopting clever or ingenious



drafting. The Court has a duty to see through such an attempt of clever drafting and examine the plaint as a whole so as to find out if a cause of action exists.

66. Principles relating to applications preferred under Order VII Rule 11 (a) of the CPC are clear and transparent. It is a settled position of law that the true test is whether the plaint, when read as a whole, discloses a cause of action. This test was recently reiterated by the Hon'ble Supreme Court in **Geetha, D/o Late Krishna v. Nanjundaswamy**¹⁰, which is extracted below:

“...7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action the plaint, the plaint shall be rejected...”

67. Now advertent to the facts of the instant case.

68. Perusal of the record shows that by way of the above said civil suit, the respondent no. 1, i.e., the plaintiff seeks the relief of partition, possession and injunction by allegedly claiming himself to be the owner of the half share of the suit property which earlier was owned by the petitioners' predecessor-in-interest.

69. As per the contents of the suit, particularly, in paragraphs no. 7, 8, 9, 11, 15, 21 and 24, it is observed that the plaintiff has made specific

¹⁰ 2023 SCC OnLine SC 1407



2024:DHC:1973



avermments with respect to the sale consideration of Rs. 1.35 Lakhs, paid by him in order to purchase the said share of the suit property from Sh. Rajender Walia. In this regard, the plaintiff has relied upon various documents including the agreement to sale/purchase, receipt, possession letter, registered general and special power of attorneys and will; all dated 19th January, 2001; executed in his favour.

70. The petitioners in this regard have submitted that the suit property as has been alleged by the respondent no. 1 has not been transferred to him by way of due legal procedure. The documents relied upon by the respondent no. 1 do not confer any ownership upon him and that the execution of the same is invalid since Sh. Kanwal Aneja only had a general power of attorney executed in his favour to care and maintain the suit property, and therefore, the ownership of the suit property could not have been transferred validly to Sh. Rajender Walia and further to Sh. Mahinder Lal.

71. This Court has also observed that while relying upon the above stated documents, the plaintiff further asserts his right to seek physical possession of the said share of the suit property which is one barsati, open space along with one shop and two rooms on the back side of the ground floor. Further as per the plaintiff, Sh. Rajender Walia, while transferring the ownership vide documents viz. agreement to sell, receipt, general and special power of attorneys, possession letter had also transferred the possessory right of the said portion of the suit property. Moreover, when the plaintiff visited the said property on 19th July, 2007, it was found that the locks which he had put thereto, were broken and in furtherance to the same, the plaintiff requested



2024:DHC:1973



the other defendants (owners of the other half of the share of the suit property/legal heirs of late Sh. Vidya Sagar and late Sh. Devi Dayal Aneja) to partition the suit property. Since the said request was denied numerous times, the plaintiff filed the above said civil suit to assert his alleged rights *qua* title, injunction and possession.

72. Finally as per paragraph no. 24 of the plaint, it has been stated that the cause of action for filing the above said civil suit arose when the plaintiff purchased ½ undivided share of the suit property from Sh. Rajender Walia on 19th October, 2001. It further arose on 19th July, 2007, when the locks of the above said share of the property were found to be broken and again, when the plaintiff asked the defendants for partition by metes and bounds. Lastly, the cause of action arose when the defendant no. 1 threatened to create a third party right.

73. At this stage, it becomes appropriate to refer to paragraph 12 and 13 of the impugned order, wherein, the learned Trial Court has held that as per the law, parties may not be owner of a property on paper, yet, possessory rights in an immovable property can be the subject matter of suit for partition.

74. It is a settled law that in order to seek partition, the ownership has to be shown and a title cannot be conferred by way of an agreement to sell, general and special power of attorney, etc. Only a sale deed confers and/or grants ownership upon a party in law, and any other document which says otherwise is generally not legally tenable.



2024:DHC:1973



75. Therefore, it is considered that the agreement to sell, receipt, possession letter, general and special power of attorneys executed in favour of the respondent no. 1 do not confer with him the ownership of the suit property.

76. The same is in accordance with the law laid down by the Hon'ble Supreme Court in *Suraj Lamp and Industries Private Limited v. State of Haryana and Another*¹¹. In the said judgment, it was held that sale and purchase of a property must be done through a deed of conveyance which is a sale deed. Without this deed, no ownership or rights in the property can be transferred. An agreement to sell, which is not a registered deed of conveyance, does not meet the legal requirements under Sections 54 and 55 of the Transfer of Property Act, 1882 and such an agreement does not transfer any ownership or rights in the property. Further, with regard to the power of attorney, it was held in the above said judgment that the same is not an instrument of transfer with respect to any right, title or interest in an immovable property. The relevant portion of the judgment is as under:

“..20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to

¹¹ (2012)1SCC 656



law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales...”

77. Hence, it is clear that whatever may be the circumstance, the plaintiff in the instant matter does not have any valid title, which implies that no cause of action with respect to the partition of the suit property has accrued in his favour.

78. This Court has observed that by passing the impugned order, the learned Trial Court has attempted to bypass the settled principles of law as per which there cannot be a part acceptance and part rejection of a plaint. A plaint is to be rejected as a whole. The same has also been held by the



2024:DHC:1973



Hon'ble Supreme Court in a catena of judgments including *Nanjundaswamy (Supra)* and *Popat and Kotecha Property (Supra)*.

79. The learned Trial Court has categorically observed in paragraph 12 of the impugned order that *'The contentions of ld. Counsel appears to carry some force, however, same lose its sheen on closer scrutiny of facts in the instant case..... Apart from claiming ownership, plaintiff has also averred that Sh. Rajender Walia was put in possession of 2nd floor of the property ... at time of sale..... Further as per the plaintiff, Sh. Rajender Walia, while transferring the ownership vide documents VIZ agreement to sell, receipt, GP A, SPA, possession letter had also transferred the possessory right of the said portion of the suit property i.e. one barsati, open space alongwith one shop and two rooms on the back side of ground floor to him. Plaintiff has specifically averred that he was put in possession of said portion by Sh. Rajender Walia. It is settled law that parties may not to be owner in true sense but they can seek partition of their possessory right... '.*

80. Upon reading of the above, this Court observes that the learned Court below has particularly ignored that a plaint has to be read in whole and not in part. The plaintiff's relief of seeking possession is not by way of a single compartment instead the said relief is interlinked with the other relief of partition and injunction.

81. At this stage, it relevant to reiterate the law where it is only the plaint as a whole does not disclose a cause of action, that Order VII Rule 11 of the CPC interdicts a suit from proceeding. The same has been followed by the



2024:DHC:1973



Hon'ble Supreme Court in *Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corpn.*¹².

82. This Court is of the view that the intention and motive of the party instituting the suit must be considered and interpreted from the overall content and language of the plaint and clever drafting must be distinguished in order to avoid any miscarriage of justice. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import.

83. Therefore, while holding that there exists a cause of action in favour of the plaintiff *qua* possessory rights, the learned Trial Court has compartmentalized and dissected the plaint which, in the opinion of this Court is impermissible in the eyes of law.

84. Considering the above and upon finding infirmity in the impugned order, this Court is inclined to exercise its revisional powers. It is held that the learned Court below has failed to exercise its jurisdiction under Order VII Rule 11 of the CPC in accordance with the settled law.

CONCLUSION

85. In regard to the discussions of facts of the instant case as well as the law, the impugned order passed by the learned Court below is unsustainable.

¹² 2022 SCC OnLine SC 641



2024:DHC:1973



86. This Court is of the view that the petitioner has made out its case for grant of relief of revision of the impugned order under Section 115 of the CPC. The learned Trial Court has not exercised its jurisdiction in accordance with the law and hence, the arguments advanced by the petitioners against the impugned order are accepted and the contentions of the respondent are rejected.

87. In light of the above, the impugned order dated 14th February, 2020, passed by the ADJ, West, Tis Hazari, Delhi, in Suit bearing no. 610933/2016, is set aside. The application filed by the petitioners under Order VII Rule 11 of the CPC stands allowed and the said suit is dismissed.

88. In view of the aforesaid terms, the instant petition stands allowed and is disposed of along with pending applications, if any.

89. The judgment be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

MARCH 12, 2024
gs/ryp/av