



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 14 February 2024**
Judgment pronounced on : 05 April 2024

+ C.R.P. 35/2022 & CM APPL. 12939/2022

DINESH CHAUHAN Petitioner
Through: Mr. L.S. Solanki, Dr. Anu
Solanki and Ms. Preeti Sharma,
Advs.
versus

SITWAT KHALID Respondent
Through: Mr. Muntazir Mehdi, Adv.

+ C.R.P. 36/2022 & CM APPL. 13636/2022

RAM PRATAP SINCE DECEASED THROUGH HIS LRS &
ANR. Petitioners
Through: Mr. L.S. Solanki, Dr. Anu
Solanki and Ms. Preeti Sharma,
Advs.
versus

SHAHID AHMED FEROZIE & ANR. Respondents
Through: Mr. Muntazir Mehdi, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. This common judgment shall decide the present Civil Revision Petition filed in terms of Section 115 of the Civil Procedure Code, 1908¹ assailing the common impugned order dated 07.12.2021 passed

¹ CPC



by the learned Civil Judge-03-C, Tis Hazari Court, Delhi² in CS No. 928/2019 and CS No.3111/2017 in the case titled ‘Shahid Ahmed Ferozie vs. Dinesh Chauhan’ and ‘Shahid Ahmed Ferozie vs. Ram Pratap & Ors.’ respectively, whereby the learned Trial Court dismissed the application under Order VII Rule 11 CPC filed by the petitioners.

2. Although the aforesaid two revision petitions are against different petitioners/defendants, the factual and circumstantial narrative in both cases are similar and even the impugned orders, separately passed in the aforesaid two cases, are *ditto* except for the narrative of facts with regard to the description of the properties. Hence, the two revision petitions can be conveniently disposed of altogether by this common order.

FACTUAL BACKGROUND

3. Shorn of unnecessary details, one Mr. Agha Mohd. Qasim S/o Agha Mohd. Hasan R/o Hyderabad, was the sole owner and in possession of the land area measuring 10 Bigha 10 Biswa, previously known as Mohalla Qasimpura, now known as Baghichi Peerji, Ram Bagh Road, Sabzi Mandi, Delhi-110007. That Agha Mohd. Qasim, being the owner, had full control and power to sell and transfer the entire land area either temporarily or permanently. Later, Mohd. Qasim leased out the entire aforementioned property/land area in perpetuity to Smt. Begum Jaan W/o Shaikh Firoziddin Japan Wale (the great grandmother of the plaintiff/Sitwat Khalid and the grandmother of Shahid Ahmed Ferozie i.e. father of the plaintiff)

² Trial Court



against a sale consideration of Rs. 50,000/- along with all the ownership rights *vide* transfer/sale documents dated 03.03.1943 including the lease deed, which was duly registered with the Sub-Registrar, Delhi. On 22.05.1979, Begum Jaan died leaving behind her two sons namely Mohammad Ahmed Ferozie and Mohammad Yusuf Ferozie (both now deceased), who had acquired the entire property i.e. Baghichi Peerji, including the suit property in question.

4. The suit property, along with other properties situated/located in Calcutta as well as in Delhi including the properties bearing No. 10335 to 10555, Baghichi Peerji, were owned and possessed by the father of the plaintiff i.e. Shahid Ahmed Ferozie by virtue of a compromise decree in suit No. 379/1990 before the High Court of Calcutta and he became the absolute owner of the said property. Later, Shahid Ferozie executed a General Power of Attorney dated 07.02.2018, which was registered on 28.02.2018 with the Sub-Registrar-I, Delhi and thereafter, he gifted all his unsold properties in favour of the plaintiff/Sitwat Khalid and executed a deed of Declaration-cum-Memory of Oral Gift dated 09.04.2018. In conclusion, the plaintiff is now the absolute owner of the entire property (consisting 'Ground to Top floor') including other properties bearing No. 10335 to 10555 in the same locality.

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5. The Petitioner/Dinesh Chauhan, who is the defendant in the main suit bearing No.928/2019 before the learned Trial Court filed his written statements alleging the fact that the present suit property falls



under the Slum Areas (Improvement and Clearance) Act, 1956³ and that the plaintiff/Sitwat Khalid has not obtained the requisite permission from the slum authorities under Section 19⁴ of the said act for the purpose of filing the suit for possession, damages and mandatory injunction. Further, it was argued that the alleged oral gift is not permissible under the Gift Act and a gift deed is required to be registered under the Registration Act, 1908, which is not registered in the present case. Lastly, the landlord-tenant relationship was also denied by the defendant.

6. *Per Contra*, the respondent/Sitwat Khalid/plaintiff, in her reply, submitted that the defendant is an illegal occupant/encroacher and therefore, no permission is required from the concerned slum authorities.

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7. The petitioner/Ram Pratap (since deceased) is the defendant in the main suit bearing No.3111/2017 before the learned Trial Court. As the petitioner had died, the written statements were filed on behalf of Defendant No.2/Ram Avtar alleging the same grievance that the entire area of Baghichi Peerji including the suit property falls under the Slum Areas Act. It was further argued that the plaintiff/Shahid Ahmed Ferozi never acquired any absolute title in view of Section 52 to 54 of the Transfer of Property Act, 1882. Also, the property was not valued and the plaintiff failed to affix the court fee in view of Section 7(4) of the Court Fees Act, 1870.

³ Slums Act

⁴ **Proceedings for eviction of tenants not to be taken without permission of the competent authority**



IMPUGNED ORDER:

8. The learned Trial Court *vide* separate orders dismissed the application under Order VII Rule 11 CPC filed by the defendants. The learned Trial Court in CS No. 928/19 observed that the judgments relied upon by the defendant are not relevant to the present facts and circumstances of the case. Further, on perusal of the record, it was observed that while dealing with an application under Order VII Rule 11 CPC, the court has to look into the averments of the plaint. It was further observed that the plaintiff is seeking eviction of the defendant on the ground that he is a trespasser in the suit property. Moreover, the dispute whether the suit property falls under the Slum Areas Act and the contention of the defendant that the gift deed is not permissible in law can only be determined after the parties lead their respective evidence. Thus, the learned Trial Court *vide* order dated 07.12.2021, dismissed the application under Order VII Rule 11 CPC. It would be expedient to reproduce the relevant observations in this regard:

“5. The defendant has misplaced his reliance upon the judgment pronounced by The Hon'ble High Court of Delhi in the case ***Harish Chander Malik Vs. Vivek Kumar Gupta 186 (2012) Delhi Law Times 697, Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. 229/2016 Delhi Law Times 197 (SC), Lal Chand Vs. Mst. Begum Jan RSA no. 40/77.***

6. I have gone through the above said judgments however, these judgments are not applicable in the case in hand.

7. It is to be noted that law applicable in deciding an application under Order 7 Rule 11 CPC is well settled. The Court has to look into the averments of the plaint and other pleadings cannot be considered at this stage. As per Section 19 of the Slum Areas (Improvement and Clearance Act) 1956 is applicable when an eviction of a tenant is sought. In the present case plaintiff is seeking the eviction of the defendant on the ground of defendant being a trespasser in the suit property. Moreover, whether the suit



property falls in the Slum Areas (Improvement and Clearance Act) 1956 is also disputed by the parties which can only be determined when the parties lead their evidence with respect to their contentions.

8. The contention of the defendant that the alleged gift deed is not permissible in law can only be proved when both the parties lead evidence. Therefore, court cannot give any finding with respect to the same at this stage.”

9. Further, the learned Trial Court in CS No. 3111/2017 reiterated its observations made in the earlier order dated 07.12.2021 in CS No. 928/19 stating that the contentions of the defendant with respect to the suit property falling under the Slums Act can only be determined after appreciation of the evidence. Concluding its order, the learned Trial Court *vide* order dated 07.12.2021, dismissed the application under Order VII Rule 11 CPC filed by the defendant. The relevant observations have been reproduced hereunder:

“4. It is to be noted that law applicable in deciding an application under Order 7 Rule 11 CPC is well settled. The Court has to look into the averments of the plaint and other pleadings cannot be considered at this stage. Moreover, whether the suit property falls in the Slum Areas (Improvement and Clearance Act) 1956 is also disputed by the parties which can only be determined when the parties lead their evidence with respect to their contentions.

5. It is also well settled law that plaint cannot be rejected and admitted in part. Plaintiff has *inter alia* sought the relief of declaration, damages, mandatory and permanent injunction from the court and the defendant has only disputed that the relief of possession cannot be granted to the plaintiff.”

GROUND OF APPEAL:

10. The impugned order dated 07.12.2021 has been assailed by the petitioners *inter alia* on the grounds that the oral gift is not valid under the Muslim law as the respondent is admittedly a Muslim and thus, he has no right to acquire any title to the said property. Further, there is a



non-compliance of Section 19 of the Slum Areas Act as no permission is sought by the respondents from the concerned slum authorities. Another objection raised by the petitioner was that the respondent wrongly assessed the valuation of the property at Rs. 3 Lacs, which is more than 1 Crore and the court has no pecuniary jurisdiction to try the suit and the suit has to be dismissed under Order VII Rule 11 CPC. Lastly, in C.R.P. No. 36/2022, the petitioners also contest the fact that the respondents never took any step to bring on record the Legal Representatives (LRs) of the deceased petitioner No.1. Hence, the present appeal.

ANALYSIS AND DECISION

11. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have gone through the relevant record of the cases.

12. At the outset, the present revision petitions are bereft of any merits. First things first, the case law is replete with propositions of law that, while considering under Order VII Rule 11 of the CPC as to whether or not the plaint disclosed any 'cause of action', the Court has to read the averments made in the plaint as a whole and it cannot travel beyond the pleadings in the plaint so as to look into the defence or the case being set up in defence by the opponent/defendant.

13. Avoiding long academic discussions, it would be expedient to invite reference to the decision in the case of **Saleem Bhai v. State of Maharashtra**⁵ to understand the scope of Order VII Rule 11 CPC, wherein it was held as under: -

⁵ (2003) 1 SCC 557



“A perusal of Order 7 Rule 11 CPC. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC 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 Rule 11 of Order 7 CPC the averments in the plaint are germane; **the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.....**” (Paragraph 9)

14. The aforesaid ratio has also been reiterated time and again and in the case of **Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar**⁶, it was held as under:

“What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. **The plaint is required to be read as a whole.** The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane.”

15. In another case decided by the Supreme Court titled **Raghwendra Sharan Singh v. Ram Prasanna Singh**⁷, the defendant was unsuccessful in his application under Order VII Rule 11 of the CPC before the Trial Court as well as High Court. The Supreme Court held as under:

“Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore

⁶ (2018) 6 SCC 422

⁷ (2020) 16 SCC 601



the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. **Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation.** Therefore, considering the decisions of this Court in *T. Arivandandam* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC. (Paragraph 7)

{bold portions emphasized}

16. In view of the aforesaid proposition of law and reverting to the instant matter, the main plank of the arguments advanced by the learned counsels for the petitioner/defendant is that the suit is barred by Section 19 of the Slums Act, which provides as under:

“19. Proceedings for eviction of tenants not to be taken without permission of the competent authority. —(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority, -

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, **any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or**

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction



of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely: —

(a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum areas;

(c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.]

17. A careful perusal of the aforesaid provision would show that it is only in the case of suit or proceedings for obtaining any decree or order for eviction of a tenant from any building or land located in the slum area that a permission is required from the Competent Authority to institute such suit or proceedings. In the instant matter, although evidently the suit property is located in a slum area, the plaintiff while pleading that he is owner of the premises in question alleges that the defendant is a tress-passer and an illegal occupant in the suit property. There is no averment that the petitioner/defendant has ever been inducted or treated as a tenant, or that the petitioner/defendant has ever given any rent to the respondent/plaintiff. There is no averment that the plaintiff has ever demanded any rent from the petitioner/defendant. The plaintiff rather claims relief in the nature of



damages and illegal occupation charges @ 10,000/- per month besides ejection and possession from the petitioner/defendant.

18. Therefore, on reading the averments in the plaint as whole, no case is set up by the respondent/plaintiff that he is landlord/owner *qua* the respondent/plaintiff. On the contrary, if we look into the defence of the petitioner/defendant, he rather claims himself to be the owner of the premises in question. Be that as it may, Section 19 of the Slums Act would come into play only when there exists a relationship of landlord and tenant between the parties irrespective of the fact whether or not the premises is covered by the provisions of the Delhi Rent Control Act, 1958⁸.

19. Learned counsel for the petitioner in his submissions relied on a decision in the case of **Harish Chander Malik v. Vivek Kumar Gupta**⁹. However, the case law does not help the petitioner. It was a case where evidently, the parties were initially having a relationship of landlord and tenant and the contractual tenancy was terminated by sending/serving notice as per the requirements of the Transfer of Property Act, 1882. In the said backdrop, it was sought to be canvassed on behalf of the landlord that the tenant had become an unauthorized occupant in the shop premises and Section 19 of the Slums Act was inapplicable. Dismissing such plea, it was held that although the word ‘tenant’ has not been defined in the Slums Act, it is defined by Section 2(1)¹⁰ of the DRC Act and even a statutory tenant

⁸ DRC Act

⁹ 186(2012) Delhi Law Times 697

¹⁰ [(1) “tenant” means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes— (i) a sub-tenant; (ii) any person



would be covered within the meaning of the word ‘eviction’ in Section 19 of the Slums Act, which has an overriding effect for starting with a non-obstante clause.

20. Lastly, insofar as the plea raised by the petitioner/defendant that an oral gift is not allowed under the Muslim Law and that the respondent/plaintiff has no legal right, title or interest in the premises, is a matter that would be required to be looked into during the course of the trial.

21. In view of the foregoing discussion, both the aforesaid revision petitions are dismissed. The learned Trial Court shall proceed with the matter in accordance with law.

22. Nothing contained herein shall have an expression of opinion on the merits of the case.

23. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

APRIL 05, 2024

Sadiq

continuing in possession after the termination of his tenancy. Explanation clause omitted as not relevant.

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