



2024:DHC:7581



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

% **Date of order: 20th September, 2024**

+ **C.R.P. 142/2024 & CM APPL. 24596/2024**

GAURAV SINGHPetitioner

Through: **Mr. Yogesh Chhabra, Advocate with
petitioner in person.**

versus

SITARAMRespondent

Through: **Appearance not given.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter as the “CPC”) read with Article 227 of the Constitution of India, 1950 has been filed on behalf of the petitioner seeking setting aside of the order dated 27th March, 2024 (hereinafter as the “impugned order”) passed by the District and Session Judge, Dwarka Court, New Delhi (hereinafter as the “Trial Court”) in suit bearing no. 933/2021, wherein the application under Order VII Rule 11 of the CPC was dismissed.

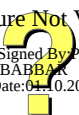
2. The brief facts of the case are that the respondent/ plaintiff allegedly purchased a plot bearing no. 53, measuring 120 square yards out of Khasra No. 6/7, situated in the Revenue Estate of Village of Pochanpur, *abadi* now

C.R.P. 142/2024

Page 1 of 21

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 04/10/2024
18:54:24





2024:DHC:7581



known as Sector 19-B, Dwarka, Delhi (hereinafter as the “suit property”) from one Mr. Aravind Kumar on 16th October, 2021 for a consideration of Rs. 12,00,000/-.

3. On 17th October, 2021, when the respondent started construction on one part of the suit property, the petitioner allegedly stopped the construction, claiming to be the owner of the said property and threatened to dispossess the respondent from the suit property.

4. On 20th October, 2021, the petitioner allegedly demolished the boundary wall of the suit property and dispossessed the respondent from the same.

5. Consequently, the respondent filed a Civil Suit bearing no. 933/2021 before the learned Trial Court for possession and permanent injunction of the suit property and for the decree to be passed in his favour.

6. Thereafter, the petitioner filed a written statement to the plaint along with an application for rejection of the plaint under Order VII Rule 11 of the CPC, which was dismissed by the learned Trial Court *vide* impugned order dated 27th March, 2024 stating that the application cannot be allowed as the issue therein is to be dealt at the stage of trial.

7. Aggrieved by the same, the petitioner filed the instant petition.

8. Learned counsel appearing on behalf of the petitioner submitted that while passing the impugned order, the learned Trial Court erred in observing that the respondent is in possession of the suit property without considering the documents relied upon by the respondent for the said possession which is





2024:DHC:7581



unstamped and unregistered.

9. It is submitted that the learned Trial Court erred in holding that the issues in the application for rejection of plaint are liable to be adjudicated at the stage of trial.

10. It is submitted that the learned Trial Court failed to appreciate the facts of the case wherein it was admitted by the respondent/ plaintiff in its plaint that the suit property was purchased with unregistered and unstamped documents and therefore, the respondent cannot claim the said possession over the suit property based on these documents as there arises no cause of action.

11. It is submitted that the learned Trial Court was incorrect in relying on the judgment in the case of *Ashok Atree Vs. Municipal Corporation 2019 SCC 19 OnLine Delhi 6988*, as the said case is not applicable to the facts of the instant case.

12. In view of the foregoing submissions, it is prayed that the impugned order passed by the learned Trial Court is contrary to the law and hence, the instant petition is liable to be dismissed.

13. *Per contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition, submitting to the effect that the learned Trial Court was correct in dismissing the application under Order VII Rule 11 of the CPC.

14. It is submitted that the learned Trial Court rightly determined that the issue of possession, which is the basis of the civil suit filed by the

C.R.P. 142/2024

Page 3 of 21

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 04/10/2024
18:54:24





2024:DHC:7581



respondent, is liable to be adjudicated at the stage of trial and the same cannot be taken up at the stage of Order VII Rule 11 of the CPC.

15. It is submitted that the learned Trial Court has rightly observed that the plaint cannot be rejected merely on the ground that the evidence on record appears to be weak.

16. It is submitted that while adjudicating the application under Order VII Rule 11 of the CPC, the Court can only advert to the contents made in the plaint and any defence thereto cannot be taken into account for rejecting the plaint.

17. It is further submitted that there is no force in the arguments advanced on behalf of the petitioners as the learned Trial Court rightly adjudicated the application therein based on the settled principles of law and pronouncements of High Courts and Hon'ble Supreme Court.

18. It is submitted that this Court has limited powers to interfere in the impugned order passed by the learned Trial Court as there is no illegality or error apparent on the face of the impugned order and therefore, revisional jurisdiction under Section 115 of the CPC cannot be invoked.

19. Therefore, in view of the foregoing submissions, it is prayed that the instant petition, being devoid of any merits is liable to be dismissed.

20. Heard the learned counsel for both the parties and perused the records.

21. It is the case of the petitioner that the learned Trial Court erred in dismissing the application under Order VII Rule 11 of the CPC as it ignored the fact that the respondent's claim of possession over the suit property is





2024:DHC:7581



based on the unstamped and unregistered documents and the same does not give rise to any cause of action.

22. In rebuttal, it is contended on behalf of the respondent that the learned Trial Court was right in observing that issues mentioned in the application under Order VII Rule 11 of the CPC are liable to be adjudicated at the stage of trial and the same cannot be adjudicated at the stage of rejection of plaint. Hence, it is prayed that the instant petition may be dismissed.

23. Therefore, the limited question for adjudication before this Court is whether the learned Trial Court erred in passing the impugned order by dismissing the application filed under Order VII Rule 11 of the CPC.

24. Therefore, this Court deems it apposite to refer the findings in the impugned order passed by the learned Trial Court, the relevant portion of which reads as follows -

"I have heard the parties and perused the record.

There is no doubt that the unregistered documents such as GPA, Agreement to Sell, etc do not transfer title as per the judgment of the Hon'ble Supreme Court in Suraj Lamp's case. However, the present suit is not one for declaration of title. As per the averments in the plaint, the Plaintiff was stopped from construction by the Defendant and on 20.10.2021, the Defendant demolished the boundary walls constructed by the Plaintiff. It is claimed that on the said date, the Plaintiff was dispossessed from the suit property

In Ashok Atree v. Municipal Corporation of Delhi and Another (2019 SCC OnLine Del 6988), Hon'ble High Court of Delhi has observed as under:

C.R.P. 142/2024

Page 5 of 21

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 04.10.2024
18:54:24





“11. The doctrine of settled possession for protecting of the same has been exhaustively dealt with by the Hon'ble Supreme Court in the case of Rame Gowda (Dead) By Lrs. v. M. Varadappa Naidu (Dead) By Lrs., (2004) 1 SCC 769. It has been categorically held by the Hon'ble Supreme Court in this judgment that to be in settled possession, the occupant must have come into possession with the acquiescence of the owner. In the present case, there is no evidence that the MCD/Union of India ever gave its consent or acquiescence for the appellant/plaintiff or his family members and forefathers to be in possession of the suit land. The relevant paras of the judgment in Rame Gowda's case (supra) are paras 8 to 10, and these paras read as under:—

“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent





even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character (emphasis supplied), or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram v. Delhi Admn., Puran Singh v. State of Punjab and Ram Rattan v. State of U.P. The authorities need not be multiplied. In Munshi Ram case it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is, entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be





obstructed or removed by the true owner even by using necessary force. In Puran Singh case the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession":

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy





the crop grown by the trespasser and take forcible possession.

10. In the cases of Munshi Ram and Puran Singh the Court has approved the statement of law made in Horam v. R. wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property.”

Therefore, what has to be seen is whether the Plaintiff was in settled and peaceful possession of the suit property. If yes, then notwithstanding the fact that the Plaintiff cannot be said to be having a title to the suit property, he is entitled to protect his possession even against the true owner who shall have to resort to the due process of law to evict him.

Therefore, in the present case, the facts and circumstances of the nature of the Plaintiff's possession will have to be seen to determine whether he had acquired possession of a settled nature which can be protected by the Plaintiff. The said adjudication will have to be done after a trial. The plaint cannot be rejected even if it appears that the evidence produced or sought to be produced is of a weak nature.

Therefore, the application under Order VII R 11 of CPC is dismissed and disposed off accordingly.”

25. Upon perusal of the aforementioned context, while passing the impugned order, the learned Trial Court has shed light on the legal positions





2024:DHC:7581



of the trespasser and the owner, discussing in detail their right over the property, wherein the outcome of possession over the property differs with the facts and circumstances of each case.

26. **Therefore, while holding the same**, the learned Trial Court opined that since the issue involved in the civil suit is with respect to the possession over the suit property, the same is liable to be determined only at the stage of trial and cannot be adjudicated while dealing with the application for rejection of plaint under Order VII Rule 11 of the CPC. Moreover, it observed that the plaint cannot be rejected on the ground that the evidence on record is of a weak nature.

27. At this stage, this Court finds it imperative to delve into the scope of Order VII Rule 11 of the CPC. A bare perusal of the said provision provides that the Court is empowered to reject a plaint based on its satisfaction of the criteria laid down under the same. The plaint can be rejected where it fails to disclose any cause of action; where it is undervalued and fails to rectify the said valuation within the time affixed by the Court; where the plaint is insufficiently stamped and the same is not rectified within the stipulated time granted by the Court; and where the plaint appears to be barred by any law.

28. The necessary factors and principles have been discussed in the recent decision by the Hon'ble Supreme Court in the case of ***Kum. Geetha vs. Nanjundaswamy & Ors., 2023 INSC 964***, wherein it was held as follows –

“Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, Code of Civil Procedure² and the precedents on the subject. The





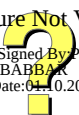
relevant principles have been succinctly explained in a recent decision of this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali MANU/SC/0508/2020 : (2020) 7 SCC 366, as follows:

23.2. The remedy Under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation Under Rule 11(a), the court would not permit the Plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, MANU/SC/0284/1986 : 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, MANU/GJ/0786/1998 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words: (SCC p. 324, para 12)

12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the Respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation,





the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, MANU/SC/0951/2003 : (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

...

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the Defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., MANU/SC/0071/2004 : (2004) 3 SCC 137]

23.11. The test for exercising the power Under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, MANU/SC/0951/2003 : (2004) 9 SCC 512] which reads as: (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.*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., MANU/SC/7671/2007 : (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, MANU/SC/0154/1999 : (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh MANU/SC/0394/1962 : AIR 1962 SC 941].*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power Under Order 7 Rule 11 Code of Civil Procedure.*

23.14. *The power Under Order 7 Rule 11 Code of Civil Procedure may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the Defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra,*





MANU/SC/1185/2002 : (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, MANU/SC/0284/1986 : 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, MANU/GJ/0786/1998 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in Clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"

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 Code of Civil Procedure must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

29. From the aforesaid case, it is observed that if the cause of action is determined at the instance of bare perusal of the plaint, then the Court need not go into the averments of the plaint to determine the same. However, upon plain reading of the plaint, in absence of any cause of action, the plaint should not be read in isolation, instead must be read in its entirety and as a whole for determining the cause of action therein. Moreover, it is pertinent for the Court to read the plaint meaningfully and if the averments therein are manifestly vexatious or meritless in not disclosing a clear right to the suit, the Court is empowered to exercise its power under Order VII Rule 11 of the CPC in rejecting the plaint.





30. The applicant in its application under Order VII Rule 11 of the CPC cannot adopt the defences to the issues pertinent to the suit as the plaint cannot be rejected when the issues involved are of triable nature. With respect to the same, the Hon'ble Supreme Court in the case of ***Chhotanben and Ors. vs. Kirithbai Jalkrushnabhai Thakkar and Ors., 2018 INSC 319***, observed as follows –

“16. In the present case, we find that the Appellants (Plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendant Nos. 1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendant Nos. 1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the Appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power Under Order VII Rule 11(d).”

31. In light of the same, it is pertinent to reproduce the averments of the plaint and the relevant portion of the same is as hereunder –

“6. That after the said purchase the plaintiff came in to possession of the suit property on 16.10.2021.

7. That on 17.10.2021, when the plaintiff started the construction over some part of the suit property, the defendant came over the suit property and stopped the plaintiff from doing any construction over the suit property and told the plaintiff that the he is the owner of the suit property and it belongs to him.





8. That thereafter, the defendant started quarrelling with the plaintiff and extended threats to disposes the plaintiff from the suit property with the help of his muscle persons and told the plaintiff to stop all the construction work and leave the suit property.

9. That on 20.10. 2021, the defendant started to demolish the boundary walls constructed by the plaintiff over the suit property with the intention to construct over the same and dispossessed the plaintiff from the suit property.

10. That on 21.10.2021, being aggrieved by the threats of the defendant, the plaintiff made a complaint to the S.H.O. P.S. sector 23 DWARKA, New Delhi against the defendant but S.H.O. did not take any action having hand in glove with the defendant.

11. That the plaintiff, made a request to the defendant not to interfere in the suit property as he is the owner and in possession of the same but the defendant decline the request of the plaintiff and. also extended threat to disposes the plaintiff from the suit property.

12. That it is pertinent to mention here that the defendant has no right, title or interest over the suit property as the above said land belongs to plaintiff.

x x x

xxx

xxx

xxx

xxx

16. That the plaintiff was in possession of the suit property from date of purchase and remained in possession till 20.10.2021 having, title, right and interest in the suit property where as the defendant has dispossessed the plaintiff from the suit property having no title, right and interest in the suit





property since defendant is a habitual land grabber in surrounding locality having a group of land mafia.

17. That the plaintiff is the rightful owner of the suit property being purchased from the original allottees and is entitled to recover possession from the defendant who is only a trespasser having no title, right or interest in the suit property.

18. That the plaintiff has no efficacious remedy to take action against the defendant but to file this suit since the prima facie case is made out against the defendant to recover the possession from the defendant and the plaintiff have title documents in respect of the suit property.

19. That the cause of action for filing the present suit arose in favour of the plaintiff when the plaintiff purchased the suit property on 16.10.2021 and came in to possession and further arose on 17.10.2021 when the plaintiff started the construction over the suit property and defendant stopped the same and further arose on 20.10.2021 when the defendant started to demolish the boundary walls of the suit property with intention to construct over the same and further arose when the plaintiff made a complaint to the Police on 21.10.2021 and further arose when the plaintiff was dispossessed by the defendant on 20.10.2021 and still exist.

20. That the cause of action arose at New Delhi, the parties to the suit reside and work for gain at New Delhi, the property in question also situate at New Delhi, hence this Hon'ble Court has got jurisdiction to try and entertain the present suit.

21. That the value of the suit for the purposes of jurisdiction and relief of possession is Rs. 10,00,000/- and the value of relief of permanent injunction is fixed Rs .130/- and composite court fee of Rs.12,100 is affixed.”





2024:DHC:7581



32. It is the contention of the petitioner that the documents relied upon by the respondent in its plaint for showcasing the possession and ownership over the suit property are unregistered and unstamped as required by Section 17 of the Registration Act.

33. However, since the issue in the civil suit deals merely with the possession over the suit property, this Court will not touch upon the concept of ownership as the same is not subject matter of the suit in which the instant petition has been filed.

34. Adverting to the issue of possession, it is a known principle that any person, either the trespasser or the rightful owner, who is in a continuous and peaceful possession of the property for a period of time, without facing any interjection from any other person pertaining to the said possession, would have a right of possession over the property. However, if a person alleging to be a rightful owner of the property and claiming to have possession over the suit property, the same can be settled by taking necessary legal recourse, and not by interfering with the possession of the trespasser.

35. It is pertinent to note the averments made in the plaint, wherein it is contested by the plaintiff that he was in a peaceful possession of the suit property from 16th October, 2021 to 20th October, 2021. However, it is to be observed that a defence with respect to the said contention was raised by the petitioner in its application under order VII Rule 11 of the CPC, stating to the effect that the plaintiff came into the possession of the suit property only based on unstamped and unregistered documents.

C.R.P. 142/2024

Page 18 of 21

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 04.10.2024
18:54:24





2024:DHC:7581



36. In light of the same, it is also pertinent to mention that the learned Trial Court relied on the requisite documents pertaining to the alleged possession such as GPA, Agreement to Sell, Possession Letter etc. and held that since the plaintiff has explicitly stated in paragraph no. 9 of the plaint that he was in possession over the suit property from 16th October, 2021 to 20th October, 2021, the same is a matter of trial and cannot be taken up at the stage of rejection of plaint.

37. Keeping in view the findings in ***Kum. Geetha vs. Nanjundaswamy & Ors. (supra)***, this Court has perused the plaint in its entirety in order to determine the cause of action. It is observed that the plaintiff/ respondent has specifically mentioned the series of events pertaining to the possession over the suit property in its plaint, wherein the plaintiff came to the possession of the suit property on 16th October, 2021 and was dispossessed from the same on 20th October, 2021. The said averments made in the plaint clearly reflect that the plaintiff/respondent was aggrieved by the said dispossession from the suit property, which led to the filing of the civil suit.

38. Therefore, from the bare perusal of the plaint as well as the contents made in the application under Order VII Rule 11 of the CPC, it is observed that the issue herein pertains to the possession of the property and the same is an integral issue in the civil suit, which is liable to be taken up at the stage of trial.

39. Moreover, it is also observed that the petitioner in its application under Order VII Rule 11 of the CPC contended that the respondent/ plaintiff





2024:DHC:7581



is not entitled to the possession of the suit property as the same is based on unstamped and unregistered documents. However, it is imperative to note that the said objection raised in its application for rejection of the plaint directly affects the integrity of the civil suit i.e., the issue of possession.

40. This Court is of the opinion that if the issue of possession, which is an integral issue of the civil suit, is adjudicated at the stage of Order VII Rule 11 of the CPC, the same would amount to improper adjudication of the matter by making the suit infructuous. This Court will not go into the veracity of the issue of possession at the stage of Order VII Rule 11 of the CPC as the said issue is triable in nature. Therefore, placing reliance on *Chhotanben (supra)*, it is observed that said issue is liable to be adjudicated only at the stage of trial and not at the stage of Order VII Rule 11 of the CPC.

41. Thus, this Court is of the view that the learned Trial Court was right in dismissing the application under Order VII Rule 11 of the CPC as the issue therein is of triable nature.

42. Therefore, considering the limited scope of interference under the civil revisional jurisdiction, this Court is not inclined to exercise its revisional powers since no infirmity or irregularity, or illegality is found in the impugned order.

43. In view of the foregoing discussions of facts and law, the impugned order dated 27th March, 2024 passed by the learned District and Sessions Judge, Dwarka Court, New Delhi in Suit bearing no. 933/2021 is upheld.





2024:DHC:7581



44. Accordingly, the instant petition stands dismissed along with pending applications, if any.

CHANDRA DHARI SINGH, J

SEPTEMBER 20, 2024
rk/mk/av

Click here to check corrigendum, if any

C.R.P. 142/2024

Page 21 of 21

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 04/10/2024
18:54:24

