



2024:DHC:5948



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

% **Date of order: 15th July, 2024**

+ **C.R.P. 294/2023 & CM APPL. 53763/2023**

INDER PAL & ORS.

.....Petitioners

Through: Ms.Ekta Kalra Sikri, Mr.Ajay Pal
Singh Kullar and Mr.K.V.Sriwas
Narayanan, Advocates

versus

JAGAT PAL

.....Respondent

Through: Mr.____, Advocate (Appearance not
given)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "Code") has been filed on behalf of petitioners seeking setting aside of the impugned order dated 22nd July, 2023 passed by the learned ADJ-03, South-East District, Saket Courts New Delhi (hereinafter "impugned order") in C.S.(DJ) No. 934/2018.

2. The relevant facts leading to the filing of the instant revision petition are as follows:

- a. Petitioner No. 1 is an ex-serviceman of the Indian Air Force and the lawful owner of property no. 449 situated at Khasra no. 359/4,

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- Aali Gaon, Sarita Vihar, New Delhi (hereinafter “property no. 449”). The aforementioned property no. 449 was allotted to him by the Gram Panchayat on 12th January, 1977 in honour of his service under a program initiated by the government. Further, he has been in possession of the property since the time of allotment.
- b. In the year 1981, the petitioner’s joint family property was partitioned and one property bearing property no. 139 (new no. 406) was divided through mutual oral agreement and another property bearing no. 449 situated at Khasra No. 359/4 in Aali Village, Sarita Vihar, and New Delhi was allotted to him.
 - c. The aforementioned property allotted to the petitioner is a double-storey building, and the respondent is in possession of the ground floor of property no. 449.
 - d. On 7th June 2018, the respondent/plaintiff was dispossessed from the property and a suit was filed by him under Section 6 of the Specific Relief Act, 1963 bearing no. CS DJ 934/2018 against the petitioners/defendants for the possession of the same. Further, a complaint under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) and an application under Section 156(3) of the CrPC was filed by the respondent on the same grounds.
 - e. Thereafter, the learned Trial Court appointed a local commissioner in order to clarify the particulars of the suit property along with identifying any construction or demolition on the suit property



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vide order dated 7th July 2018 and restricted the petitioners from creating any third-party interests or raising any construction on the property of the respondent.

- f. The petitioners filed an application under Order VII Rule 11 of the Code seeking rejection of the plaint on the ground that no cause of action had been disclosed. The learned Trial Court held that there was a factual dispute between the parties and therefore, dismissed the aforementioned application *vide* impugned order dated 22nd July, 2023.
- g. Aggrieved by the aforesaid impugned order, the petitioners have filed the instant civil revision petition seeking setting aside of the same.

3. The learned counsel appearing on behalf of the petitioners/revisionists submitted that the learned Trial Court failed to appreciate the facts and circumstances of the case and passed the impugned order without the application of judicial mind.

4. It is submitted that the learned Trial Court failed to consider that the respondent failed to disclose any cause of action since the respondent is already in possession of property No. 406 and hence a decree of possession of suit property No. 406, near Sapera Basti, Aali Village, Sarita Vihar, New Delhi cannot be passed in its favour.

5. It is submitted that it is the settled position of law that the basic question for adjudication in an application filed under Order VII Rule 11 of



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the Code is whether a cause of action has been set out in the plaint or something purely illusory has been stated to evade the rigours of Order VII Rule 11 of the Code.

6. It is submitted that the learned Trial Court failed to consider that the property described in the electricity bills attached with the plaint and the property alleged to be dispossessed are entirely different and situated at a distance. Further, property No. 406 as described in the plaint is a double-storey property and not the subject matter of dispute as it is already in possession of the respondent. It is further submitted that no cause of action can be made out on reading the present plaint.

7. It is submitted that the learned Trial Court has failed to consider that no document or proof, other than electricity and water bills of property No. 406, was attached with the plaint that shows that the respondent was in possession of the above said property and the petitioner had dispossessed him from the same. It is further submitted that no document or proof has been produced before the learned Trial Court to show that property No. 406 has been dispossessed or that it is situated at Khasra No. 359/4.

8. Therefore, in view of the foregoing submissions, it is prayed on behalf of the petitioners that the impugned order passed by the learned Trial Court may be set aside.

9. *Per Contra*, learned counsel for the respondent vehemently opposed the submissions made by the petitioners to the effect that the impugned order passed by the learned Trial Court is good in law.

10. It is submitted that the impugned order has been passed after taking



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into consideration the entire facts and circumstances of the case and there is no illegality of any kind in the impugned order.

11. It is submitted that plaintiff (respondent herein) has substantiated his suit with a copy of a utility bill from BSES, indicating that the property Plot No. 406, was registered in the name of Mr. Jagat Pal, i.e. the respondent herein (plaintiff) who was dispossessed, and a site plan related to this matter has also been submitted.

12. It is submitted that the learned Trial Court has correctly determined the scope of Order VII Rule 11 of the Code and rightly dismissed the application filed under the afore said provision as the plaint filed before the learned Trial Court shows that the cause of action exists to file the suit.

13. Therefore, in view of the foregoing submissions, it is prayed on behalf of the respondents that the impugned order passed by the learned Trial Court may be upheld.

14. Heard the learned counsel for the parties and perused the record.

15. It is the case of the petitioners that the learned Trial Court erred in passing the impugned order as it failed to consider that the documents attached with the suit do not disclose any cause of action. It is contended that there is no cause of action in favour of the respondent as he is in possession of property no. 406. It is further contended that while dealing with an application under Order VII Rule 11 of the Code, the Court must determine whether a cause of action has been set out in the plaint and in the present case, the plaint reveals no clear cause of action, therefore, the Court should exercise its powers under Order VII Rule 11 to dismiss the plaint.



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16. It is contended that the learned Trial Court failed to consider that the properties described in the electricity bills attached to the plaint and the property alleged to be dispossessed are entirely different and situated at a distance from each other.

17. In rival submissions, it is contended that the Court should not take into account the defences presented in the written statement when deciding on the application under Order VII Rule 11 of the Code. It is further contended that the plaintiff (respondent herein) has substantiated his suit with a copy of a utility bill from BSES, indicating that the property in question, Plot No. 406, was registered in the name of Mr. Jagat Pal, i.e. the respondent herein (plaintiff) who was dispossessed, and a site plan related to this matter has also been submitted.

18. The question for adjudication before this Court is whether on a plain reading of the plaint, a cause of action is being made out.

19. At this stage, it is apposite to peruse the impugned order passed by the learned Trial Court. The relevant paragraphs of the same are reproduced hereinbelow:

“Arguments on application under Order 7 Rule 11 CPC concluded.

The application is mainly premised on the ground that there is no cause of action in respect of Plot No.406, Aali Village, Sarita Vihar, New Delhi as this property is already in possession of the plaintiff and the property which is made the subject matter of the present suit is in fact Plot No.449, Khasra No.359/4 and has no connection with Plot No.406.

On the contrary, Ld. Counsel for plaintiff has opposed the application that the court is not to consider the defences taken



in the written statement while adjudicating the application under Order 7 Rule 11 CPC. It is further argued that plaintiff has supported his suit with the copy of utility bill of BSES showing that the suit property i.e. Plot No. 406 was in the name of Sh. Jagat Pal, who was dispossessed and the site plan in this regard has also been filed.

It is trite law that while deciding the application under Order 7 Rule 11 CPC, the court has to restrict itself only to the averments made in the plaint and no consideration can be accorded to the written statement. The main premise of the present application is the defence of the defendant that the suit property is incorrectly numbered as 406 instead of 449 Khasra no.359/4. This is a factual dispute between the parties and, thus, cannot constitute a ground for rejection of the plaint. Application under Order 7 Rule 11 CPC accordingly stands dismissed.

In so far as the report of Ld. LC is concerned, the same shall be considered at the appropriate stage.

Pleadings are complete. Following issues are framed:

- 1. Whether the plaintiff is entitled to decree of possession against the defendant under Section 6 of Specific Relief Act in respect of the property i.e. 406, measuring 65 Sq yards with built up shade situated near Sapara Basti, Aali Village, Sarita Vihar, New Delhi (suit property), as prayed for? OPP.*
- 2. Whether the plaintiff is entitled to decree of permanent injunction against the defendant in respect of the suit property, as prayed for? OPP.*
- 3. Whether there is no cause of action in favor of the plaintiff as the suit property is incorrectly numbered as 406 instead of 449, Khasra no.359/4, as alleged? OPD.*
- 4. Whether the suit property was allotted by Gram Sabha, Aali Village to the defendant no.1 in recognition of his services in Indian Airforce, as alleged? OPD.*
- 5. Relief.*

No other issues arises or pressed for.



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List of witnesses be filed on behalf of both the parties within two weeks from today in compliance of Order 16 Rule 1 CPC. Plaintiff is directed to provide copy of the affidavit of witnesses within four weeks from today to opposite side. List now for plaintiff's evidence on 21.10.2023."

20. Upon perusal of the aforementioned impugned order, it is made out that the learned Trial Court framed issues for adjudication regarding the respondent/plaintiff's entitlement to a decree of possession against the petitioners/defendants with respect to the suit property, the respondent /plaintiff's entitlement to permanent injunction, whether there is cause of action in favor of the respondent/plaintiff due to misnumbering of the property, and whether the suit property was allotted by the Gram Sabha and relief.

21. The learned Trial Court observed that the main contention was that no cause of action arose with respect to property No. 406 as it was already in possession of the respondent/plaintiff.

21. The learned Tribunal held that it is well-established that when deciding an application under Order VII Rule 11 of the Code, the Court can only look at the claims made in the plaint and cannot consider the written statement. The main point of the current application is that the defendant argues the property in question is incorrectly numbered as 406 instead of 449 Khasra No. 359/4. This disagreement over the facts is between the parties and cannot be used as a reason to dismiss the plaint under Order VII Rule 11 of the Code and accordingly, dismissed the application.



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22. Here, it is imperative to discuss the scope of revision under Section 115 of the Code. It is well settled that scope of revision is limited and it was enacted with a view to enable the Courts to correct certain errors of jurisdiction committed by the subordinate Courts. It is evident that the High Court may only intervene in the decisions of the subordinate Court if there has been an illegality or significant irregularity in the exercise of its jurisdiction. Under its revisional powers, the High Court cannot adjudicate upon the factual findings of the subordinate Court, rather, it can only interfere if there are issues with the Court's jurisdiction.

23. The issue in the instant case is with regard to the alleged erroneous adjudication of the application filed under Order VII Rule 11 of the Code, therefore, it is imperative to briefly state the settled position of law with respect to the same.

24. In the case of ***Eldeco Housing & Industries Ltd. v. Ashok Vidyarthi***, **2023 SCC OnLine SC 1612**, the Hon'ble Supreme Court held that in case parties approach the Court under Order VII Rule 11 of the Code, the Court is not entitled to consider any evidence or enter into a disputed question of fact or law, rather the Court can decide the application only on the basis of the averments made in the plaint. Thus, it is pertinent to note that Courts are not empowered to adjudicate upon questions of law and fact under Order VII Rule 11 of the Code. The relevant portion of the said judgment is reproduced below:

“17. In Kamala v. K. T. Eshwara Sa, this Court opined that for invoking clause (d) of Order VII Rule 11 CPC, only the



averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below:

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

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint



on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

25. In the case of ***Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614***, the Hon’ble Supreme Court held that 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. The relevant paragraph has been reproduced herein:

“25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr Nariman did not dispute that “law” within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action 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 whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. 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. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [(2004) 9 SCC 512] and Popat and Kotecha Property v. State Bank of India Staff Assn. [(2005) 7 SCC 510]”

26. In light of the facts of the instant case, this Court is of the view that it is imperative to determine whether a cause of action arose in the plaint or not.

27. This Court has perused the impugned order as well as the averments made in the plaint. In paragraph no. 7 of the plaint, it has been stated that the petitioners entered the suit property on 4th May, 2018, started beating buffaloes on the suit property and placed locks on the gate in order to take forcible possession of the suit property from the lawful possession of the respondent/plaintiff.

28. On perusal of paragraph no. 9, it is contended that on 26th May, 2018, the petitioners started demolishing the wall of the suit property and installed a large gate. The son of the respondent/plaintiff informed the PCR about the same and Patrol vehicle Kite 09 arrived at the suit property. Subsequently, the police officers said that since the suit property was in dispute, they would be unable to do anything in this regard.

29. On reading paragraph no. 11, it is contended that the petitioners are



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alleged trespassers in the suit property and are not vested with any rights and interests including the right to sell or transfer with regard to the aforementioned property. Further, the respondent was concerned that the petitioners might hand over the possession of the suit property to the builder and may raise illegal constructions.

30. Moreover, as per paragraph no. 12, the respondent sought relief of possession under section 6 of the Specific Relief Act, 1963 as the petitioners illegally trespassed in the suit property.

31. In paragraph no. 14, the plaint mentions four instances where the cause of action arose. First, the cause of action arose on 4th May, 2018, when the defendants/petitioners herein trespassed on the suit property. Second, it arose when the petitioners started demolishing the suit property on 26th May, 2018 and 1st June, 2018. Third, when the respondent came to know that the petitioners were going to hand over the possession of the suit property for construction of a multi-storey building. Fourth, cause of action exists as the petitioners are still in the alleged illegal possession of the suit property and might create third party rights. The relevant paragraphs of the plaint are reproduced below:

“7. That on 04.05.2018 at about 7:30 am all the defendants came at the suit property and all were armed with danda. They started beating to the buffalows of the plaintiff and removed all buffalos from the suit property and by putting lock on the agte of the suit property they succeeded to take forcible possession of the suit property from the lawful possession of the plaintiff. Same day the plaintiff lodged a written complaint dated 04.05.2018 vide D.D. No. 27B to the S.H.O of the P.S. Sarita



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Vihar. The photocopy of the complaint dated 04.05.2018 bearing D.D. No. 27B is annexed herewith as Annexure P-6.

9. That on 26th May, 2018 at about 9 AM the defendants started demolition to the wall of the suit property and removed the small gate of the suit property installed by the plaintiff and installed a big gate on the suit property. The son of the plaintiff namely Kapil informed this illegal act of the defendants to P.C.R by calling 100 number and the same was attended by P.C.R Patrol Vehicle Kite -09, mobile no. 9821003109 and it was informed through SMS to son of the plaintiff that kite – 09 mobile no. 98211003129 is reaching you” The police of P.S. Sarita Vihar came at the suit property and shown their inability saying that it is property dispute and they are unable to do anything in this regard, The photograph dated 26.05.2018 is annexed herewith as Annexure P-7.

11. That the defendants are trespasser in the suit property and have no right, titled and interest in the suit property and have no right to sell or transfer or raise construction on the suit property. But plaintiff is under the fear that defendant may hand over the possession of the suit property to the builder mafia and may raise construction on the suit property.

12. That the plaintiff is seeking relief of possession u/s 6 of Specific relief act as the defendants have illegally trespassed into the suit property. The plaintiff is also seeking relief of permanent injunction as the defendant are trying to raise construction on the suit property and are also trying to create third party interest in the suit.

14. That the cause of action for filling of the present suit arose in favour of the plaintiff and against the defendants on 04.05.2018 when the defendants on 04.05.2018 when the defendants trespassed into the suit property, again on



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26.05.2018 when the defendants started demolition on the suit property again on 01.06.2018 when the plaintiff came to know that the defendants are going to hand over the possession of the suit property to builder mafia for construction of multistorey building. The cause of action is still continued as the defendants are still in illegal possession of the suit property and may create third party interest in the suit.”

32. Thus, in the present case there exists cause of action in favour of the respondent to file the aforementioned suit as the plaint clearly shows there is demolition of walls of the suit property and the attempt of its illegal transfer made to the suit property.

33. In view of the above discussions and circumstances, this Court does not find any cogent reason to interfere in the impugned order dated 22nd July, 2023 passed by the learned ADJ-03, South-East District, Saket Courts New Delhi in C.S.(DJ) No. 934/2018 and the same is, hereby, upheld.

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

35. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 15, 2024

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Click here to check corrigendum, if any

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Digitally Signed
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