



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

% Reserved on : 16th November, 2023
Pronounced on : 15th February, 2024

+ **FAO(OS) 112/2023 & CM APPL. 55511/2023.**

NEENA KAPOOR & ORS. Appellants
Through: Mr. Vaibhav Dang, Advocate.

versus

VISHNU KHANNA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

ANISH DAYAL, J.

1. The appellants assail order dated 14.08.2023 (“**impugned order**”) by the learned Single Judge of this Court in I.A. No. 467/2023 (“**application for rejection of plaint**”) in CS(OS) 690/2022 (“**subject suit**”) by which appellants’ application under Order VII Rule 11(a) and 11(d) read with Section 151 of the Code of Civil Procedure, 1908 (“**CPC**”) for rejection of plaint was dismissed.

2. The respondent/plaintiff filed the subject suit for injunction against the appellants, who are arrayed as defendant nos. 1 to 4 therein, restraining them from interfering in the ingress and egress of the respondent in property at First Floor (*rear flat*), admeasuring 1,110 square feet in the



building constructed on a plot of land at E-14/7 Vasant Vihar, Delhi – 110057 admeasuring 400 square yards (“**subject property**”).

Factual Background

3. Brief facts relevant to the present adjudication are as follows:

- (i) According to the plaint filed in the subject suit, respondent’s mother, Late Dr. Pushpa Khanna (“**Dr. Khanna**”), was the owner of the subject property, and she acquired the same through three documents, namely, the Agreement to Sell dated 20.03.1989 (“**the ATS**”), the General Power of Attorney dated 20.03.1989 (“**the GPA**”), and the Deed of Apartment dated 20.03.1989 (“**the Deed**”).
- (ii) Dr. Khanna died intestate on 16.07.2021, and thereafter the respondent was appointed as the Interim Administrator of her estate by this Court in Test Case No. 21/2022 *vide* order dated 02.03.2022. On 07.07.2021, when the respondent visited the suit property, he found it to be locked by the appellants and his entry was obstructed by them. Accordingly, the respondent filed the subject suit.
- (iii) Appellants raised several preliminary objections against the maintainability of the subject suit in their written statement before the learned Single Judge. They also filed an application for rejection of plaint, and the impugned order was rendered pursuant to the same.



Impugned Order

4. The learned Single Judge, *inter alia*, observed that since the respondent filed the subject suit in the capacity of an Interim Administrator, the contention that a suit for declaration of title with consequential relief ought to have been filed as opposed to a suit for injunction simpliciter is erroneous. It was further held that, since the previous suit filed by Dr. Khanna was withdrawn under Order XXIII Rule 1 CPC (as recorded in order dated 05.11.2020 in C.S. No. 169/2020) after recording the appellants' no objection, the appellants' contention that the subject suit is barred on the principle of estoppel is also untenable.

5. Lastly, the learned Single Judge observed that the appellants' reliance on *Suraj Lamp & Industries Pvt. Lrd. Vs. State of Haryana & Ors.*, (2012) 1 SCC 656 is misplaced as, while the said decision proscribes parties from claiming title in immovable properties based on unregistered documents, it also clarifies that genuine transactions which are recognizable in law are still protected.

Submissions on behalf of the Appellants

6. The appellants, *inter alia*, raised the following grounds to challenge the impugned order:

- (i) To establish Dr. Khanna's ownership of the suit property, respondent relied on unregistered and unstamped documents; such documents not being valid instruments of title of the suit property. Reliance in this regard was placed, *inter alia*, on the Hon'ble Supreme Court's decision in *Suraj Lamps (supra)*.



- (ii) Furthermore, the appellants submit that the real owner of the suit property is one Krishan Murari Sharma; however, the documents relied upon by the respondent to establish Dr. Khanna's title were all executed by one Satish Seth, a builder with whom Krishan Sharma had entered into a collaboration agreement dated 05.09.1988, which was subsequently cancelled. Appellants also submit that *Suraj Lamps (supra)* only protects genuine transactions where the owner of the property grants a power of attorney in favour of a family member, or a friend. Krishan Murari Sharma, the real owner of the subject property, did not execute any document in favour of such family members or even in favour of a builder to manage or sell the subject property on his behalf.
- (iii) Respondent has not filed any other document, apart from the ATS, the GPA, and the Deed, to establish his mother's title over the suit property. Dr. Khanna was involved in various litigations involving the subject property and therefore her title was under serious dispute. The respondent, per the decision of the Hon'ble Supreme Court in *Anathula Sudhakar vs. P. Buchi Reddy (dead) by LRs. And Ors.*, (2008) 4 SCC 594, could only have filed a suit for declaration of title and the consequential relief of injunction, as opposed to a suit for injunction simpliciter which has been filed in the present case.
- (iv) In para 10 of the plaint, the respondent provides particulars of pending litigation regarding the subject property, reflecting that



Dr. Khanna's title over the subject property is under serious dispute.

- (v) The subject suit is barred by estoppel as Dr. Khanna had filed a similar suit against the appellants bearing C.S. No. 169/2020 (“**previous suit**”) seeking injunction simpliciter with respect to the suit property. When the appellants filed their written statement and contested Dr. Khanna's title over the suit property, Dr. Khanna withdrew the said suit unconditionally, as is evident from order dated 05.11.2020 in the previous suit.

Analysis and Conclusion

7. We have heard counsel for the appellants, and examined the law and the material placed on record.

8. We are in agreement with the view taken by the learned Single Judge. It is trite law that, in an application under Order VII Rule 11 of CPC, only the averments made in the plaint are germane, and the plea taken by the defendant is irrelevant. The fundamental question to be decided while dealing with an application for rejection of plaint is whether a real cause of action has been set out in the plaint. (See: *Saleem Bhai vs. State of Maharashtra*, 2003 1 SCC 557; *I.T.C vs. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70).

9. Appellants seek rejection of the plaint filed by the respondent in the subject suit under Order VII Rules 11(a) and 11(d) of CPC. In this regard, the appellants make three broad submissions: *firstly*, that documents relied upon by respondent in order to establish Dr. Khanna's ownership are not



valid as per *Suraj Lamps (supra)*; *secondly*, that since the title of the suit property is under cloud, the respondent could only have sued for declaration of title and the consequential relief of injunction as per *Anathula Sudhakar (supra)*; and *lastly*, that the respondent is estopped from filing the subject suit in light of the withdrawal of the previous suit filed by his mother against the appellants.

10. Principles relating to applications preferred under Order VII Rule 11(a) of CPC are clear and transparent. It is a settled position of law that 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 para 7 of *Geetha, D/o Late Krishna and Ors. vs. Nanjundaswamy and Others*, 2023 SCC OnLine SC 1407, 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.”

(emphasis added)

11. Furthermore, pursuant to an application under Order VII Rule 11 of the CPC, a plaint cannot be rejected in part. This principle has been explained by the Hon'ble Supreme Court in *Madhav Prasad Aggarwal v. Axis Bank Ltd.*, (2019) 7 SCC 158, in the following paragraph:

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory



requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.”

(emphasis added)

12. Even regards Order VII Rule 11(d) is concerned, it is settled position of law that no material except the plaint or documents annexed with the plaint can be considered if an application under Order VII Rule 11(d) is preferred by the defendant. Principles in this regard were elaborated by the Hon’ble Supreme Cour of India in ***Kamala v. K.T. Eshwara Sa***, (2008) 12 SCC 661 and following extracts from the said judgment may offer useful reminders on the said principles:

“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.



....
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.”*

(emphasis added)

This decision was recently relied upon in ***Eldeco Housing and Industries Limited v. Ashok Vidyarthi and Others***, (2023) SCC OnLine SC 1612.

13. It is clear from the plaint that it was limited to the purpose of a decree of permanent injunction in favour of respondent restraining appellants, and their representatives from interfering and causing impediment in the ingress and egress of the respondent into the said property. The plaint is prefaced with the statement of the respondent-plaintiff that in view of being appointed as an Interim Administrator under Section 247 of the Indian Succession Act, 1925 by this Court *vide* order dated 02nd March, 2022 in Testamentary Case No. 21/2022, the subject suit for permanent injunction and damages was preferred.

14. The grievance simpliciter related to alleged illegal and *malafide* acts of appellants who were causing impediments in the ingress and egress of the respondent to the said property.

15. Despite being appointed as an Interim Administrator of the estate of Dr. Khanna, plaintiff averred that on 07th July, 2022 when he visited the subject property, appellants denied access and used abusive language.



Consequently, respondent filed a complaint on 07th July, 2022 before the SHO, PS- Vasant Vihar and yet another complaint on 08th August, 2022. Considering that the acts of appellants were not abating, the subject suit was preferred for permanent injunction and damages.

16. The cause of action was articulated in the following manner:

“38. The cause of action first arose in favour of the Plaintiff in July 2021 when the Defendants caused impediments and obstructions in the ingress and egress of the Plaintiff into the Said Flat, which caused the Plaintiff to file Complaints dated 23.07.2021 and 31.07.2021 before the SHO, Police Station Vasant Vihar, Delhi 110-057.

39. The cause of action arose in August 2021 when the Defendants assaulted the Plaintiff and his driver in the building at the Said Plot which caused the Plaintiff to file a complaint dated 17.08.2021 before the SHO, Police Station Vasant Vihar, Delhi 110-057.

40. The cause of action arose on 7.07.2022, when the Defendants caused impediments in the ingress and egress of the Plaintiff into the Said Flat and also caused criminal intimidation by using unsavoury language and profanities against the Plaintiff thereby threatening the plaintiff to relinquish / forgo all his right, title, interest in the Said Flat in favour of the Defendants.

41. The cause of action arose on 08.08.2022 when the Plaintiff filed another complaint before the SHO, Police Station, Vasant Vihar, Delhi 110057 seeking the assistance of the police to break open the lock on the main gate of the building at the Said Plot, thereby removing the impediments and obstacles in the ingress in egress of the Plaintiff into the Said Flat.”

(emphasis added)



17. It is quite clear from a perusal of the plaint that it was limited to the grievance averred by the respondent-plaintiff and the relief sought.

18. None of the grounds as raised by appellants herein are acceptable considering the Court cannot displace the suit merely on the basis of issues which purportedly relate to the title of Dr. Khanna's estate. Respondent in the suit does not claim title but merely seeks an injunction on account of appointment as an Interim Administrator.

19. The role of such Interim Administrator is limited to safeguarding the estate of the deceased. The relevant extract from order dated 02.03.2022 in in Test Case (Probate) No. 21/2022 appointing the respondent as interim administrator is produced below:

“12... Thus, in my view, the estate of the deceased is to be preserved. Other than [sic] the petitioners, there are no other legal heirs of the deceased. The petitioner no. 2 is not residing in India. Therefore, it is deemed appropriate that the petitioner no.1 is engaged as an administrator during the pendency of the present petition so as to safeguard the estate of late Pushpa Khanna.

13. In view of the above, it is deemed appropriate that the petitioner no.1 is engaged as an Administrator during the pendency of the present petition so as to safeguard the estate of late Pushpa Khanna.

14. The petitioner no.1 shall exercise all rights and powers of an administrator with respect to the estate of late Dr. Pushpa Khanna, except the right to distribute such estate.”

(emphasis added)



20. In *Anathula Sudhakar* (*supra*), the plaintiffs filed the suit in the capacity of ‘owners’ in possession of the property. Therefore, appellants’ reliance on *Anathula Sudhakar* (*supra*) is untenable, and has rightly been rejected by the Single Judge. Appellants reliance on the decision of the Hon’ble Supreme Court in *Balram Singh v. Kelo Devi*, 2022 SCC OnLine SC 1283 in this regard is also misplaced. In *Balram Singh* (*supra*), plaintiff filed the original suit, on the basis of an unregistered agreement to sell, seeking permanent injunction restraining the defendant from disturbing her possession in the suit property. The facts in the present case are completely different. The present suit, it is reiterated, has been filed by the respondent in the limited capacity of an Interim Administrator, and as such, the subject suit does not fall within the ambit of the above decisions.

21. Appellants’ reliance on para 10 of the plaint (wherein a list of litigation Dr. Khanna was engaged in has been produced) to indicate that the title of the subject property is under serious dispute, and therefore, the respondent, as her successor-in-interest, should have filed a suit for declaration of title with consequential relief, is also untenable for the same reason.

22. As regards *Suraj Lamps* (*supra*), again the same may not be relevant for determination of an application under Order VII Rule 11 of the CPC, particularly, in light of the principles articulated above. Insofar as appellants’ contention that the ATS, the GPA, and the Deed are invalid in light of the decision of the Hon’ble Supreme Court in *Suraj Lamps* (*supra*) is concerned, the same at best would have to be decided during trial. It cannot form the basis for a rejection of plaint under Order VII Rule



11. In any event, these are not water tight situations, and even if the defendant's objection is to be assessed, it would have to be in light of the texture of the decision of the Supreme Court in *Suraj Lamps (supra)*. In *Suraj Lamps (supra)*, the Apex Court was conscious of the innumerable property transactions based on unregistered documents that have been entered into prior to the said decision, and categorically clarified that parties can rely on unregistered and insufficiently stamped agreements to sell, and GPAs to defend their right, *inter alia*, under Section 53A of the Transfer of Property Act, 1882.

23. Aside from this, the issue of estoppel, would also not be tenable, considering that the previous suit was filed by the predecessor in interest of the respondent on the basis of her purported title over the subject property; however, on a reading of the whole plaint in the subject suit, it is clear that the respondent has filed the subject suit in the capacity of the Interim Administrator of Dr. Khanna's estate, including the subject property. The averments with respect to Dr. Khanna's title cannot be looked at in isolation, and the entirety of the plaint is to be considered to see whether it is barred by any law. Accordingly, we do not find any merit in the submission that the plaint is barred by estoppel.

24. Grounds raised by appellants involve delving into issues which are beyond what is stated in the plaint and, if at all, would be subject to the proceedings in the trial. Consideration of issues beyond the plaint, including the cause of action it presents and the reliefs sought, is categorically proscribed by principles applicable to Order VII Rule 11 of CPC.



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25. Therefore, in light of the above discussion, this Courts find no reason to accept this appeal and displace the impugned decision by the learned Single Judge. The impugned order is upheld.

26. The appeal is dismissed. Pending applications, if any, are rendered infructuous.

27. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

(VIBHU BAKHRU)
JUDGE

FEBRUARY 15, 2024/rk