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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 11.12.2024*

+ RFA(OS) 85/2016 and CM APPL. 37910/2017
NORTH DELHI MUNICIPAL CORPORATIONAppellant
Through: Mr. Sanjay Poddar, Senior Advocate
with Ms. Puja S. Kalra, Standing
Counsel with Mr. Virendra Singh,
Advocate.

versus

M/S VEERA BUILDERS THR ITS PARTNER & ORS

.....Respondents
Through: Mr. Shivanshu Bhardwaj and
Ms. Priyanshi Bhardwaj, Advocates
for R1.
Mr. Amit Rao, Advocate for R-4 and
R-5.
Mr. Kapil Midha and Ms. Samiksha
Gupta, Advocates for R-9.
Mr. Ankit Rajgarhia and Ms. Palak
Sharma, Advocates for R-11.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present Regular First Appeal under Order 43 Rule 1 of the Code of Civil Procedure (hereinafter “the CPC”) read with section 10 of the Delhi High Court Act, 1908 seeks to assail the judgment and decree dated 07.07.2015 passed by the learned Single Judge in CS (OS) No. 1349 of



2015. Vide the impugned judgment, the learned Single Judge has dismissed the suit preferred by the appellant plaintiff seeking declaration and possession in respect of plot bearing No. C-8/1 to C-8/5, Rana Pratap Bagh, measuring 4,000 sq. yards by holding that the suit was without any cause of action and was consequently baseless and frivolous.

2. Before dealing with the rival submissions of the parties, we may briefly note that factual matrix as emerging from the record.

3. On 09.05.1950, one Sardar Jasbeer Singh, who was the owner of 70,022 sq. yds in Mahaldar Khan Garden in Sadhora Kalan Estate, on 09.05.1950 entered into an agreement with M/s DLF Universal Ltd. for development and parceling of the said land into plots of suitable sizes and thereafter selling the plots to the general public. Similarly, on 29.05.1950, Sardar Hardayal Singh, who was the owner of another parcel of land measuring 52,533 sq. yds. in the same area i.e. Mahaldar Khan Garden in Sadhora Kalan Estate, Delhi entered into a similar agreement with M/s DLF Universal Ltd. for development, parceling and sale of plots in this land. Pursuant to these agreements, DLF developed these pieces of land into a residential colony, which is now known as Rana Pratap Bagh, which plots were sold to the general public by M/s DLF Universal Ltd.

4. These plots included plot Nos. C-8/1 to C-8/5 which are the subject matter of the adjudication in the present appeal. It may be noted that these plots were initially sold in the year 1959 through a Power of Attorney executed by Sh Hardayal Singh and Sh Jasbeer Singh and in 1963, plans for construction of the ground floor of the property were sanctioned *qua* plot No. C-8/3 by the appellant. On 20.11.1992, a building plan for construction on the subject property was submitted to the appellant by the respondent



no.1, which plan was rejected *inter alia* on the ground that since the plot in question was earmarked as ‘reserved’, building activity thereon was not permitted.

5. The respondent no.1 then preferred an appeal before the Appellate Tribunal, MCD, which was allowed on 16.12.1993 by observing that sanction for construction ought to be accorded. While allowing the appeal, the learned Tribunal noted that there was already a single storied construction on plot bearing number C-8/3 which construction had come up only after due sanction from the appellant in 1963 and, therefore, there was no reason for not sanctioning the plan for construction on the first floor and second floor of the property at this stage. The learned Tribunal, therefore, rejected the appellant’s plea that since the plot was a part of reserved area as per the layout plan forming part of the deed of settlement dated 29.07.1989 executed between the Municipal Corporation of Delhi (MCD) and the DLF, the appellant was the owner thereof and the respondent had no rights in the property.

6. Being aggrieved, the appellant preferred an appeal before the Hon’ble Lieutenant Governor which came to be rejected on 16.12.1998. This order was challenged by the appellant by way of a writ petition before this Court, being W.P. (C) No. 5770/99, which writ petition came to be dismissed on 21.11.2001. However, since despite the dismissal of their writ petition, the appellant did not sanction the building plan submitted by respondent no.1 on 20.11.1992, the respondent no. 1 preferred W.P. (C) 2070/04 before this Court. During the pendency of the writ petition, the appellant, without considering the question of ownership of land, released the building plan of



the respondent no. 1 and therefore, the writ petition was disposed of on 27.05.2004.

7. However, since the respondent was not able to carry out the construction within the prescribed period as per the sanction plan due to the prolonged litigation at the behest of the appellant beginning from the proceedings before the learned MCD Tribunal to this Court by way of W.P. (C) 2070/2004, the respondent preferred yet another writ petition, being W.P. (C) 1575 of 2007. This writ petition was allowed by the learned Single Judge on 08.12.2010 by observing that the appellant's claim of ownership of the subject land was barred by the principle of constructive *res judicata*.

8. Aggrieved by the aforesaid order dated 08.12.2010, the appellant preferred a Review petition being 665/12, which was disposed of on 25.10.2013 with liberty to the appellant to initiate appropriate proceedings seeking possession. Though this order was assailed by the respondent no. 1 by way of LPA bearing no. 34/2014, his challenge to the order dated 25.10.2013 was rejected both by this Court as also by the Apex Court by way of SLP no. 9791/2014, which came to be rejected on 21.04.2014.

9. It is then that the appellant instituted the suit, being CS (OS) 1349 of 2015, seeking the following reliefs:

- (i) *“a decree of declaration to the effect that the suit property "Reserved Land" being in plots allegedly bearing No.C-S/l to C-8/5, Rana Pratap Bagh, vests in the Municipal Corporation; and*
- (ii) *a decree of possession in favour of the plaintiff and against the defendants for handing over possession of plots bearing No. C-8/1 to C-8/5, Rana Pratap Bagh, measuring 4,000 sq. yards;”*



10. The aforesaid suit came to be rejected by the learned Single Judge by observing that the suit property was admittedly in possession of the respondent since 1962 when the initial plans for construction of their respective dwellings were sanctioned by the appellant. This was followed by yet another building plan being sanctioned for further construction in respect of plot No.C-8/3 on 08.12.2010 and consequently, it was a clear case where the ownership of the respondents had been accepted by the appellant right since 1962. The learned Single Judge came to the conclusion that the suit was without any cause of action and was, therefore, baseless and frivolous. Consequently, vide its impugned judgment dated 07.07.2015, the suit came to be rejected at the very threshold.

11. It is in these circumstances that the present appeal has been filed.

12. In support of the appeal, learned senior counsel for the appellant has at the outset urged that the learned Single Judge has erred in dismissing the suit *in limine* without there being any application under Order 7 Rule 11 CPC being filed by the respondents. In support of his plea, he places reliance on the decision of the Apex Court in ***Alka Gupta v. Narender Kumar (2010) 10 SCC 141*** and ***G. Nagaraj & Anr. v. B.P.Mrthumjayayanna & Ors CA No. 2737/2023***. He further submits that the learned Single Judge has failed to appreciate that the suit land had been reserved for community facility for all plot holders and therefore, it was not open for either the original owners, Sh Hardayal Singh and Sh Jasbeer Singh, or for the respondents to claim that they were owners of the said land having purchased the same upon consideration being paid to the DLF or to Sh. Hardayal Singh. In support of his plea, he places reliance on the decision in ***P.V. Gururaj Reddy & Anr. v.***



P. Neeradhw & Ors. (2015) 8 SCC 331 and Pt. Chet Ram Vashist v. MCD (1995 SCC(1) 47 .

13. Finally, he submits that the learned Single Judge has also erred in holding that there was an acceptance and admission by the appellant of the ownership of the respondent of the plots in question. He submits that the learned Single Judge has failed to appreciate that the subject plot were sought to be transferred in favour of the respondent fraudulently. He has, therefore, by placing reliance on a decision in ***A.V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors. (2007) 4 SCC 221*** urged that fraud vitiates all actions and, therefore, prays that the impugned judgment be set aside and the suit be remanded back to the learned Single Judge for adjudication on merits after issuance of summons to the respondents defendants.

14. On the other hand, Mr. Shivanshu Bhardwaj, learned counsel for the respondents supports the impugned order and submits that when the averments made in the plaint itself show that the suit was without any cause of action, the learned Single Judge was justified in rejecting the suit at the very threshold without compelling the respondents to face a prolonged trial.

15. Having considered the submissions of the learned counsel for the parties, we may begin by noting the relevant extracts of the impugned judgment, which read as under:

“Considering the fact that the initial building sanction plan was issued by the Municipal Corporation in 1962 admittedly against proof of ownership, also subsequently in 2010, the Court is of the view that there is a clear acceptance and admission by the Municipal Corporation/plaintiff of the defendants' ownership of the aforesaid suit property. The plaintiffs case is that the suit property is shown as a 'reserved area' in the layout plan



as was sanctioned for DLF, which defendants and of which they have admittedly been in possession ever since 1962. This fact was fully known to DLF/defendant No. 2, the developer of the said colony and no objection was raised by them against the construction of the building/structure by the defendants on the basis of the building plan sanctioned by the plaintiff/Municipal Corporation. The latter cannot have a better title or right to any part of the colony, than its developer-DLF. The ownership of the defendants has been accepted by the plaintiff twice over: initially in 1962 and again in 2010, when the first and second building plans respectively were sanctioned by it. If the plans were sanctioned 55 years ago for building in a 'reserved area' of layout plan, then the Municipal Corporation itself has to bear the consequences thereof. The defendants' settled right and title cannot be questioned after a lapse of more than half a century. Since DLF itself has not raised any issue with respect to the ownership and possession of the said property, no better rights, title or interest would pass on to the Municipal Corporation."

16. From a perusal of the aforesaid extracts of the impugned judgment, it clearly emerges that the learned Single Judge found that the suit had been filed despite there being a clear admission by the appellant that the building plan had been sanctioned in 1962 only after accepting the respondents' proof of ownership of the suit property. Furthermore, the learned Single Judge also observed that the M/s DLF Universal Ltd, the developer of the colony had never raised any objection whatsoever *qua* the construction of the building by the respondent on the basis of the building plans sanctioned by the appellant and, therefore, the appellant could have no better title or right than the original developer, i.e., the DLF. Consequently, the learned Single Judge opined that in a situation like present where plan had been sanctioned almost



55 years ago the appellant could not now be permitted to question the respondents settled right and title after lapse of more than half a century.

17. In the light of these categoric findings of the learned Single Judge, we have put to learned senior counsel for the appellant as to how the appellant could now be permitted to claim ownership in the land in the suit property merely because of the said property being shown as reserved area in the layout plan forming part of the Settlement Agreement dated 29.07.1989 entered between the appellant and the DLF Universal Ltd. Except for baldly urging that the plots, which had been reserved for community purposes, had been fraudulently transferred in favour of the respondents, he has no satisfactory response thereto. He has, however, vehemently urged that irrespective of this factual position from which it was evident that the respondents were in possession of the suit land since at least 1962, the appellant was still entitled to seek a declaration qua the suit property and has contended that rejection of the suit *in limine* without trial would cause grave prejudice to the general public who will be deprived of enjoyment of land meant for public purpose.

18. We are, however, unable to find any merit in this submission as we are of the considered view that when the appellant itself admits that the respondents have been in possession of the suit land as owners thereof since 1962, the learned Single Judge was correct in urging that the suit had been filed without any cause of action. Even though, the learned Senior Counsel for the appellant is correct in urging that it is only the averments in the plaint which are required to be considered at the time of issuance of summons in the suit and the plaint should not be rejected if the averments made therein disclose any cause of action, the factual position in the present case is,



however, otherwise as no subsisting cause of action was found to be existing in favour of the appellant. It is trite law that the Court has inherent power to ensure that frivolous or vexatious claims are nipped in the bud, for which purpose reference may be made to the decision of the Apex Court in ***Sopan Sukhdeo Sable v Asstt. Charity Commr. (2004) 3 SCC 137***, wherein it was observed that this power may be exercised by the Court, even without the intervention of the defendant. Similarly, in ***K. Akbar Ali v. K. Umar Khan, (2021) 14 SCC 51***, it has been held by the Apex Court that the provisions of Order 7 Rule 11 CPC are not exhaustive in nature and a duty is cast upon the Court to see that precious judicial time is not spent in a suit which is *ex facie* not maintainable for want of cause of action.

19. Upon a perusal of the extracts of the impugned judgment noted hereinabove, it is evident that from the averments made in the plaint itself, no cause of action was made out. The learned Single Judge was, therefore, justified in coming to the conclusion that the suit was baseless and frivolous. In this regard we may also refer to the decision of the Apex Court in, ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1***, relevant extracts thereof read as under:

“94. On a consideration of the scheme of Orders 4, 5 and 7CPC, we arrive at the following conclusions:

94.1. A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act, 1963 is the date of presentation for the purpose of the said Act. By virtue of Order 4 Rule 1(3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order 6 and Order 7.



94.2. *When the court decides the question as to issue of summons under Order 5 Rule 1, what the court must consider is whether a suit has been duly instituted.*

94.3. *Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order 7 Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu. (See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju [Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy, (2018) 14 SCC 1])”*

20. In the present case, the respondents or their predecessor in interest have been occupying the suit properties for the last over sixty years and, therefore, in a situation like the present, it would be against the interest of justice to entertain the wholly misconceived claim raised by the appellant at this belated stage. When we find that the plaint in conjunction with the documents filed alongwith the plaint in itself shows that the suit was



manifestly vexatious and without any cause of action, the learned Single Judge cannot be faulted for rejecting the suit *in limine* itself.

21. We have also considered the decisions in *Alka Gupta (supra)* and *G. Nagaraj (supra)* relied upon by the appellant but find that the same are not applicable to the facts of the instant case. In the said decision, the Apex court has emphasized that the power to reject the suit at the threshold can be exercised only by looking into the averments made into the plaint as also the documents produced alongwith the plaint and the suit cannot be rejected on the basis of the stand taken by the defendant in his written statement or the grounds raised in the application under Order 7 CPC. In the present case, it is clear that the learned Single Judge has rejected the suit without even issuing summons to the defendants as upon consideration of the averments made in the plaint and the documents annexed therewith, it was found that the suit was without any cause of action.

22. We have also considered the decisions in *in P.V. Gururaj Reddy & Anr. (supra)* and in *Pt. Chet Ram Vashist (supra)* but find that even these decisions are not applicable to the peculiar facts of the present case where the appellants are now trying to raise the claim in respect of the property which has been in possession of the respondents for last over sixty years. No doubt, the land earmarked for community purposes ought to be permitted to be used for the said purposes only but that cannot imply that the purported reservation made for community services more than sixty years ago should now be permitted to be implemented and that too by dispossessing persons who have all along been in legal possession of the suit property about which the appellant admittedly had knowledge since 1962 itself.



23. Finally, we may also refer to the decision in *A.V. Papayya Sastry & Ors. (supra)* relied upon by the appellant. This decision we find lays down the well settled principle that fraud vitiates all action whether *in rem* or *in personam*. We, however, find that except for bald plea that the plots were transferred in favour of the respondents by fraud, the appellants have failed to even allege as to what fraud was committed by them. In fact, we find that it is not even the appellant's case that the subject plots were not purchased by the respondents for valid consideration or that they are encroachers. From the very averments made in para 14 to 16 of the plaint, it is evident that even as per the appellant the suit property which they claim was reserved for community purposes had been fragmented into five plots and that even building plan with respect to plot no. C-8/3 i.e one of the five plots, was sanctioned by the building department of the appellant itself. This decision, therefore, also does not forward the case of the appellant.

24. In view of the aforesaid, we find no reasons to interfere with the impugned judgment. The appeal being meritless is, alongwith pending application, dismissed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

DECEMBER 11, 2024

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