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

+ **C.R.P. 61/2025**

SHRI SUKHMAL JAINPetitioner
Through: Ms. Kamalakshi Singh,
Adv.
versus
SMT USHA JAIN & ANR.Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER
% **25.02.2025**

**CM APPL. 11516/2025 (exemption from filing certified copies /
dim / margin / illegible copies of the annexures)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. By the present petition, the petitioner challenges the order dated 12.12.2024 (hereafter '**impugned order**'), passed by the learned Trial Court, in Civ suit 740/17, whereby the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**CPC**) was dismissed.

4. The suit was filed way back in the year 2017 by the respondents / plaintiffs, seeking following prayers :

- i. *Pass a decree of Permanent Injunction in favour of the plaintiffs and against the defendant and restrain the defendant his family member/LRs, employees, agents, attorneys, assigns and successors etc., permanently & perpetually, **from using the Stairs, shown in the Red colour, in the site plan, and belonging to the plaintiffs and also restrain them from interfering /***

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- invading in rights of the plaintiffs to enjoy their stairs & property belonging to the plaintiffs, shown in red and green colour in the site plan annexed herewith, in the interest of justice.*
- ii. *Pass a decree of Mandatory Injunction in favour of the plaintiffs and against the defendant, directing the defendant to reconstruct his own stairs at his own portion of his property, shown in yellow strips in the site plan, annexed herewith, for the use of defendant & his family members and **not to use the stairs of the plaintiffs**, shown in red colour in site plan, annexed herewith. The defendant be also directed that the defendant should not stop and interfere the plaintiffs from the using and enjoying their said stairs & property.*
- iii. *Pass a decree for recovery of damages/mesne profit @Rs.500/- per day for using the stairs, belonging to the plaintiffs, shown in red colour in the site plan, annexed herewith, from the date of filing of the suit till the date of realization, in favour of the plaintiffs and against the defendant.*
- iv. *To allow the cost of litigation in favour of the plaintiffs and against the defendant.*

Any other relief order(s) may also be passed in favour of the plaintiffs and against the defendant as this Hon'ble Court deems fit and proper under the given facts and circumstances.

(emphasis supplied)

5. The application under Order VII Rule 11 of the CPC was filed by the petitioner / defendant in the month of December, 2024 claiming that the suit is not maintainable.

6. It is the case of the defendant that the plaintiffs are not in possession of the suit property and a suit merely seeking injunction is not maintainable.

7. The petitioner has relied upon the judgment passed by the Hon'ble Apex Court in the case of **Anathula Sudhakar v. P. Buchi Reddy : (2008) 4 SCC 594.**



8. The learned counsel for the petitioner submits that the learned Trial Court erroneously recorded that the defendant did not dispute the plaintiff's possession of the shops.

9. She further submits that it is a settled law that the application under Order VII Rule 11 of the CPC can be filed at any stage and only because the suit has proceeded, the same cannot be a ground of rejecting the application.

10. I have heard the learned counsel and perused the record.

11. At the outset, it is relevant to note that while an application under Order VII Rule 11 of the CPC can be filed at any stage, however, it cannot be disputed that the purpose of the application is to save the defendant from being subjected to a protracted trial of a suit which itself is not maintainable. The purpose of the said provision is to stifle sham civil actions at the very start without further wasting judicial time.

12. On being pointedly asked, it is informed that the suit is now listed for defence evidence. The suit was filed way back in the year 2017. Much water has flown since then. The petitioner appears to have woken up after seven years and filed an application under Order VII Rule 11 of the CPC.

13. Even so, this Court considers it apposite to consider the merits of the present case.

14. The petitioner is essentially aggrieved that the present suit is not maintainable as the plaintiffs have sought no relief *qua* declaration of title, even though they are not in possession of the suit property. Reliance has been placed on the case of **Anathula Sudhakar v. P. Buchi Reddy** (*supra*) where it has been held by the Hon'ble Apex Court that if the title of the plaintiff is under a cloud and he does not have possession, a suit for declaration and



possession, with or without a consequential injunction, is the remedy.

15. The learned Trial Court, by the impugned order, noted that the plaint clearly outlines the cause of action and the claim of the plaintiff that he is possession of the suit property. A bare perusal of the plaint shows that it is the case of the plaintiffs that the defendant extended threats to take forcible possession of the suit property. A number of incidents have also been underlined where it is claimed that the defendant had stopped the plaintiffs from using the stairs in question as well as the gallery. It has been categorically pleaded that the defendant is *interfering* with the rights of the plaintiffs of using the stairs and gallery, which is being commonly used since February, 2015.

16. In the case of *Anathula Sudhakar v. P. Buchi Reddy* (*supra*), it has also been held that where there is mere interference with the plaintiff's lawful possession or threat of dispossession, a simpliciter suit for injunction would be sufficient. Thus, at this stage, it cannot be said that the plaint is not maintainable merely because no prayer *qua* title is made as the entire case of the plaintiffs is that the defendant is interfering with their rights.

17. It is further argued that the learned Trial Court has erroneously recorded that the petitioner has not disputed the plaintiff's possession of the shops in question. At the stage of adjudicating an application under Order 7 Rule 11 of the CPC, the Court is only required to consider the averments in the plaint along with any attached documents, instead of the defence of the defendants. Thus, the said argument does not help the case of the petitioner at this stage.



18. Moreover, as per the plaint, as also appreciated by the learned Trial Court, the dispute was limited to the staircase and gallery, which can only be resolved after the evidence is recorded. It has also been noted that the defendants filed a suit (CS No. 786/17) for possession, cancellation of documents, recovery of damages and permanent injunction which was dismissed by the learned ADJ, which suggests that the plaintiffs are in possession of the staircase and gallery.

19. It has also been rightly noted by the learned Trial Court that the arguments as raised by the petitioner in relation to tenancy of the plaintiffs, fraudulent nature of the sale deeds, inaccuracies of the site plan and the non-filing of necessary documents by the plaintiffs are in the nature of defences, which cannot be evaluated while adjudicating an application under Order 7 Rule 11 of the CPC.

20. In view of the above, the present petition is disposed of with liberty to the petitioner to raise all defences before the learned Trial Court.

21. The learned Trial Court is also requested to expedite the recording of evidence.

22. The present petition is, therefore, dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

FEBRUARY 25, 2025

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