



2025:DHC:5941



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

Date of Decision: 15.07.2025

+ **C.R.P. 322/2023, CM APPL. 57418/2023, CM APPL. 57419/2023,
CM APPL. 36299/2024**

PARDEEP KUMAR & ANR.

.....Petitioners

Through: Mr. Praveen Suri, Mr. Sumit Pandey,
Adv.

versus

SURAJ BHAN & ANR.

.....Respondents

Through: Dr. Suman Chaudhary, Adv. for LR of
R-1
Mr. Shivam Sachdeva, ASC for MCD

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed by the Petitioners under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] seeking to challenge an order dated 07.08.2023 passed by Ld. ASCJ-cum-JSCC-cum-Guardian Judge, District-South West, Dwarka Courts, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, an Application under Order VII Rule 11 of the CPC filed by the Petitioners (Defendant Nos.2 and 3 before the learned Trial Court) has been dismissed.

2. Learned Counsel for the Petitioners submits that the challenge in the present Petition as raised by the Petitioners is only on one ground. Learned Counsel submits that the suit is barred by under the provisions of Section 41(j) of the Special Relief Act, 1963 [hereinafter referred to as 'SR Act'].



3. The learned Trial Court examined the Application under Order VII Rule 11 of the CPC filed by the Petitioners and gave a finding that for the purpose of deciding an application under Order VII Rule 11 of the CPC, the Court is not required to go through the Written Statement or documents and Court is to confine its examination to the averments made in the plaint. Upon such examination, the learned Trial Court found that there are specific averments in the plaint about the damage of the property of the Respondent No.1/Plaintiff on account of the constructions raised by the Petitioners. The plaint was also accompanied by photographs in support of these allegations.

3.1 The learned Trial Court has by the Impugned Order thus held that the damage caused due to the construction constitutes a sufficient cause of action to file the suit and thus has dismissed the Application under Order VII Rule 11 of the CPC filed by the Petitioners. It is this order that is the subject matter of challenge before this Court.

4. A perusal of the plaint shows that a suit has been filed for mandatory and permanent injunction in respect of the property at Plot No.3 admeasuring 250 sq. yds. at Village Dindar Pur, Near Goyla Dore, Delhi [hereinafter referred to as 'suit property']. It is the case of the Respondent No.1 (Plaintiff before the learned Trial Court) that the Petitioners are the owners of the suit property and that the Petitioners started some unauthorised construction in the suit property and raised a wall next to the suit property, which has led to leakage and seepages that would cause harm to the house of the Respondent No.1/Plaintiff.

4.1 The plaint as filed by the Respondent No.1/Plaintiff also discloses that



despite complaints made to Respondent No.2/MCD and other statutory authorities, the construction was continued by the Petitioners. Thus, the plaint was filed by the Respondent No.1/Plaintiff seeking decree of mandatory and permanent injunction against the Petitioners before this Court. It is apposite to set out the relevant paragraphs of the plaint, including the prayer clause, below:

“2. That the defendant no.2 and 3 is the owner of the plot no.3, Village Dindar Pur, Near Goyla More, Delhi total measuring 250 Sq. Yds. which falls on the main Gurugram road and is also adjacent to the house of the plaintiff and the said property is the suit property which is clearly shown in red color in the Site Plan which is Annexure A.

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4. That till June 2022 the suit property is the vacant plot and no unauthorized construction was raised by the defendant no.2 & 3 in the suit property. That but surprisingly in the month of July 2022 defendant no.2 & 3 starts digging the foundation of the plot and also install the iron pillars in the suit property without taking any permission/sanction plan from the defendant no.1.

5. That on seeing this plaintiff has requested the defendant no.2 and 3 to stop the unauthorized construction in the suit property or to take necessary permission from the defendant no.1 but the defendant no.2 and 3 did not pay any heed to the request of the plaintiff and further raise the wall in the suit property and also starts preparing for completing the roof of the ground floor because due to said unauthorized digging and construction by the defendant no.2 and 3, the house of the plaintiff was damaged and seeping was started in the rainy seasons.

6. That on seeing this plaintiff has again requested the defendant no.2 and 3 to stop the construction over the suit property as it also damage and diminish value of the property of the plaintiff which is adjacent to the suit property but surprisingly this time also defendant no.2 and 3 not paid any heed to the request of the plaintiff and instead of stopping the unauthorized construction threaten the plaintiff to implicate in false cases and to face dire consequences as the defendant no.2 and 3 have links with the higher police officials and defendant no.2 and 3 are still adamant to raise further unauthorized construction in the suit property.

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8. That by aggrieved from the action and statement of the local police plaintiff



filed a complaint to concern DCP and other higher police official on 18-7-2022 about the net of the local police and **unauthorized construction raised by the defendant no.2 and 3 but no action till today has been taken by the police and the copy of the complaint is annexed herewith as Annexure B.**

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13. That the construction raised by the defendant no.2 and 3 is illegal and unlawful and the said construction would cause harm to the house of the plaintiff because the defendant no.2 and 3 raising the construction in full swing illegally and unauthorizedly without any permission as well as without taking any precautionary measure as clearly shown in the photographs which are annexed herewith as Annexure-E (Colly).

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17. That the cause of action for filing the present suit arose in favour of the plaintiff in the month of July 2022 when defendant no.2 and 3 starts digging the foundation of the suit property and also install the iron pillars in the suit property without taking any permission/sanction plan from the defendant no.1. That the cause of action further arose on various occasions when the plaintiff has requested the defendant no.2 and 3 to stop the unauthorized construction in the suit property or to take necessary permission from the defendant no.1. That the cause of action further arose on 18-7-2022 when the plaintiff made complaint against the illegal and unauthorized construction raised by the defendant no.2 and 3 before the defendant no.1. That the cause of action further arose on 27-7-2022 **when the plaintiff made complaint against the illegal and unauthorized construction raised by the defendant no.2 and 3 before the Deputy Commissioner, Najafgarh Zone, MCD. That the cause of action further arose when the defendant no.2 and 3 has given threats to the plaintiff to face dire consequences if the plaintiff would try to create any obstruction in the construction raised by the defendant no.2 and 3. The cause of action is still subsist as the defendants** are adamant to raise illegal and unauthorized construction over the suit property.

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PRAYER

In view of the aforesaid facts and circumstances, it is respectfully prayed that this Hon'ble Court may kindly be pleased to: -

a). **Pass a decree of Mandatory Injunction in favour of the plaintiff and against the defendants** thereby directing the defendants to remove all the illegal and unauthorized construction raised by the defendant no.2 and 3 in the suit property bearing no. Plot no.3, Village Deendar Pur, near Goyla More, Delhi as shown in red color in the site plan and the defendant no.1 be directed to demolish the illegal and unauthorized construction raised by the defendant no.2 and 3.



- b). **Pass a decree of Permanent Injunction in favor of the plaintiff and against** the defendants thereby restraining the defendant no.2 and 3 from raising any kind of construction in suit property bearing no. Plot no.3 Village Deendar Pur, near Goyla More, Delhi as shown in red color in the site plan.
- c). Cost of the suit may kindly be awarded in favour of the plaintiff and against the defendants.”

[Emphasis Supplied]

5. As stated above, the only ground that has been taken by the Petitioners is that the plaint is barred by law under the provisions of Section 41(j) of the SR Act. Section 41(j) of the SR Act reads as follows:

“41. Injunction when refused.— An injunction cannot be granted —

.....

(j) when the plaintiff has no personal interest in the matter.”

5.1 A plain reading of the Section 41(j) of the SR Act shows that an injunction cannot be granted when the Plaintiff has no personal interest in the matter.

6. Clearly, the suit as has been filed by the Respondent No.1/Plaintiff is based on his personal interest for the purpose of protecting damage to his property on account of acts of the Respondents. The property of the Respondent No.1/Plaintiff would qualify as personal interest. Thus, the contention of the learned Counsel for the Petitioners is without any merit.

7. In an examination under Order VII Rule 11 of the CPC, the Court is only required to examine the contents of the plaint and the documents filed with the plaint. It is settled law that for the purposes of an examination under Order VII Rule 11 of the CPC, the defence of a party cannot be looked into.

7.1 It is trite law that in an Application filed under Order VII Rule 11 of



the CPC, the plaint and averments are to be taken on their face and on a demurer. At this stage, the Court is not entitled to consider the case of defence. In this regard, it is apposite to set out the observations made by the Supreme Court in the case of *C. Natrajan v. Ashim Bai and Anr.*¹, the relevant extract of which is reproduced herein:

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510 : (2005) 4 CTC 489])”

[Emphasis Supplied]

8. It is settled law that the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order VII Rule 11 of the CPC. Whether the plaint discloses a cause of action is essentially a question of fact which is determined on the basis of averments made in the plaint in its entirety taking those averments to be correct. Therefore, to set out a cause of action in a plaint, only material facts are required to be stated and not the evidence *per se* except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. Consequently, while assessing whether a plaint discloses a cause of action, the court is only required to examine whether the cause of action is such which necessitates determination by the Court and not whether the plaintiff will actually succeed in the suit or not. This position of law has

¹ (2007) 14 SCC 183.



been crystallised by the Supreme Court in *Mayar (H.K.) Ltd. & Ors. v. Owners & Parties, Vessel M.V. Fortune Express & Ors.*², the relevant extract of which is set out herein below:

*“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. **The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.** In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”*

[Emphasis Supplied]

8.1 As stated above, a review of the plaint shows that it has been filed for possession, permission and mandatory injunction along with prayers for removal of debris etc. A clear and distinct cause of action has been set out in the plaint.

9. The revisionary jurisdiction of this Court is limited to examine whether the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested or has acted with illegal or material

² (2006) 3 SCC 100



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irregularity.

10. The examination of the Impugned Order by this Court shows that the Impugned Order does not suffer from any infirmity which would require interference by this Court.

11. The Petition is accordingly dismissed. The pending Application stands closed.

12. It is however clarified that this order has been passed without prejudice to the rights and contentions of the parties which are left open to be agitated before the learned Trial Court.

13. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 15, 2025/jn/pa