$~29

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

% ***Date of Decision: 28.05.2025***

\+ **C.R.P. 9/2025 & CM APPL. 2454/2025**

VAJYANTI@VARSHA . ....Petitioner

Through: Mr. Vipin Rana, Advocate.

versus

LAXMI DEVI & ANR. .....Respondents

Through: Mr. Arvind Kumar & Ms. Rakshika, Advocates.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 12.08.2024 passed by learned Civil Judge-03, West, Tis Hazari Courts, Delhi [hereinafter referred to as the "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioner/Defendant No.2 has been dismissed by the learned Trial Court.

2. The learned Trial Court has held that there is no merit in the Application under Order VII Rule 11 of the CPC filed by the Petitioner/Defendant No.2.

3. Learned Counsel for the Petitioner makes two submissions. Firstly, it is submitted that the Suit is barred by "*lis pendens*". Secondly, it is

submitted that there are no registered documents in favour of the Respondent No.1/Plaintiff, and thus, the Suit is barred by Section 17 of the Registration Act, 1908 [hereinafter referred to as the "Registration Act"].

4. Learned Counsel for the Respondents makes only one submission. He submits that the contentions raised by the Petitioner before this Court have already been dealt with by the learned Trial Court in the Impugned Order. Learned Counsel for the Respondents further reiterates the contentions set out in his Reply to the present Petition.

5. This Court has examined the Application under Order VII Rule 11 of the CPC. A perusal of the Application under Order VII Rule 11 of the CPC does show that the contentions raised by the Petitioner before this Court were also raised by the Applicant/Petitioner in the Application filed before the learned Trial Court.

5.1 It is apposite to set out the relevant paragraphs of the Application under Order VII Rule 11 of the CPC, which are below:

> *"6. That **the suit of plaintiff is hit by the section - 52 of Transfer Of Property Act as the suit property was allegedly purchased by the plaintiff during pendency of petition under section - 12 Of PWDV, Act and execution of maintenance between the defendant no.2 and her husband**.*
>
> *7. That **the suit of the plaintiff is barred by section - 17 of Registration Act, as the property has been allegedly transferred by executing customary notarized unregistered documents** just to mislead the Hon'ble Trial Court.*
>
> *8. That it is established principle of law that while considering the question of rejection of plaint, court needs to pursue the plaint only and on bare perusal it becomes quit clear that **the plaint does not disclose any cause of action and is barred by law then the court need not look into any other documents and the suit should be nipped in the bud**.*
>
> *9. That while considering this aspect the court should be careful to look beyond the clever drafting and on the root of the case as to whether the*

plaintiff has any cause of action or not. The provision of rejection of plaint has been enacted to discourage the litigants from flooding the courts with frivolous and vexatious claims. When a court even on its own motion finds a suit to be deficient in having a cause of action, such suit should be rejected so that there is no more any abuse of the process of the court.

xxx xxx xxx xxx

12. The plaintiff has not only concealed the material facts but has played fraud upon the Court by misleading the Hon'ble Court…….”

[Emphasis supplied]

5.2 In response, the Respondent No.1/Plaintiff had averred in her reply to the Application under Order VII, Rule 11 of CPC that she bought the Suit Property in the year 2015 from the erstwhile owner by way of a sale deed dated 12.12.2015 for a consideration of Rs 6,50,000/-. It was also averred by the Respondent No.1/Plaintiff that the Petitioner/Defendant No. 2 was never the owner of the suit property and thus, does not have any *locus standi* to challenge the title of the Respondent No.1/Plaintiff. Accordingly, it was contended before the learned trial court by the Respondent No. 1/Plaintiff that the Application should be dismissed. The relevant extracts of the Reply is set out below:

“PRELIMINARY OBJECTIONS:

1. That the present application is nothing but an abuse of the process of law and has been filed by the Defendant No.2 malafidely to delay the matter as well as to deprive the Plaintiff from his right, title and interest in the suit property. ***It is submitted that the Plaintiff purchased the suit property on 12.12.2015 from its erstwhile owner Shri Kishan Lal vide customary sale/transfer documents against a valid sale consideration of Rs.6,50,000/-, wherein it is acknowledged the handing over the vacant possession of the suit property to the purchaser (Plaintiff) herein, on the spot****. From all these it is crystal clear that* ***the Plaintiff has acquired a legitimate right in the suit property which the Defendant No.2 is adamant to deprive, though she admittedly never remained the owner and has any locus standi to challenge the right, title and interest in the suit property.*** *As such the Plaintiff has every right to protect his said rights and interest by preferring the present suit, which is very much* *maintainable and sustainable in law and facts.*

xxx xxx xxx xxx

4. That the application under reply is liable to be dismissed as the Plaintiff discloses all true, relevant and material facts which are necessary for the just, proper and complete decision of the case. ***The plain language of Order 7 Rule 11 CPC shows that for determination of an application under this provision, the court has to look into the plaint.*** *This concept has been extended by the Judicial pronouncement of various courts so as to take within its ambit and the court should proceeded with the trial, record the evidence and only after the trial of the suit concluded then the Power under this provision can be exercised. In the present case the suit of Plaintiff prima-facie shows cause of action and requires trial therefore, the present application is liable to be dismissed with costs.*

"PARA WISE REPLY:

6 & 7. That the contents of paras 5 and 6 of the application are wrong, misleading, evasive, baseless, motivated and hence denied in toto. ***It is specifically denied that the suit of the plaintiff is hit by section 52 of transfer of Property Act or barred by Section 17 of Registration Act, as alleged. The Defendant No.2 has no locus standi to challenge the right, title and interest of the Plaintiff in the present proceedings. The Defendant No.2 despite having no locus standi is seeking the relief of declaration by filing the present malicious application and is attempting to create a false dispute which is neither maintainable nor sustainable in law and is lack of jurisdiction****..."*

[Emphasis supplied]

6. Briefly the facts are that a suit for recovery of possession, arrears, mesne profits/damages and injunction was filed by the Respondent No.1/Plaintiff before the learned Trial Court. It is the case of the Respondent No.1/Plaintiff that she is the owner and landlord of the property bearing No.215, 4th Floor, Janta Flats, Swayam Sidha Colony Group Housing Society, West Punjabi Bagh, New Delhi - 110026, [hereinafter referred to as the "Suit Property"] which was let out to the Petitioner for a period of 11 months from 12.12.2015 to 12.11.2016. An amount of Rs.2.6 lacs was paid by the Petitioner to Respondent No.1 as a one-time deposit. Thereafter, at

the request of the Petitioner and at a rental in the sum of Rs.8,000/- per month, an extension was sought for two months. A legal notice was thereafter sent on 04.12.2018 asking Respondent No. 1 to vacate the Suit Property. However, since after the expiry of the term, the Petitioner has failed to vacate the Suit Property, this suit has been filed.

7. The Petitioner has taken several defences in her Written Statement. However, it is settled law that for a decision on an application under Order VII Rule 11 of the CPC, only the averments in the plaint can be looked into. *[See **Kamala & Ors. v. K.T. Eshwara SA & Ors.**[1]]*

8. The Petitioner has relied on Section 52 of the Transfer of Property Act, 1882 [hereinafter referred to as the "TP Act"] to contend that since another proceeding is pending under the Protection of Women from Domestic Violence Act, 2005 thus, the present suit is not maintainable.

8.1 This contention of the Petitioner is without merit. Section 52 of the Transfer of Property Act, 1882 [hereinafter referred to as the "TP Act"] essentially entails that no property, which is already subject matter of a suit or proceeding pending before a Court, can be transferred or dealt with by a party to the suit or proceeding, without the leave of the Court. The provision is applicable to immovable properties which are a part of pending suit proceedings. Section 52 of the TP Act reads as follows:

> ***"52. Transfer of property pending suit relating thereto.—During the pendency in any Court having*** *authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government,* ***of any suit or proceeding [which is not collusive and] in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to***

[1] (2008) 12 SCC 661

affect the rights of any other party thereto under any decree or order *which may be made therein, except under the authority of the Court and on such terms as it may impose.*

Explanation.—For the purposes of this section, ***the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order*** *and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."*

[Emphasis Supplied]

9. A plain reading of Section 52 of the TP Act shows that the provision sets out that during the pendency of proceedings before a Court in respect of a property, in which any part in respect of that property is in question, such property cannot be transferred except with the leave of the Court and on such terms as the Court deems fit.

9.1 The Supreme Court in the case of ***Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Ors.***[2] has clarified this and has held that "*lis pendens"* bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the Court and on terms imposed by it. The provision is intended to ensure that alienation of property which is the subject matter of proceedings does not take place. The relevant extract of the ***Siddamsetty*** case is reproduced below:

"45. Section 52 of the Transfer of Property Act, 1882 states that ***during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings. The explanation to the provision states that for the purposes of the***

[2] 2024 SCC OnLine SC 3214

Signature Not Verified
Digitally Signed
By:RAHUL
Signing Date:13.06.2025
13:43:48

Section, the pendency of a suit or proceedings shall be deemed to commence from the date of the presentation of the plaint or institution of the proceeding in a Court, and shall continue until the suit or proceeding is disposed by a "final decree or order" *and complete satisfaction of the order is obtained, unless it has become unobtainable by reason of the expiry of any period of limitation. Section 52 of the Transfer of Property Act reads as follows:*

> *"52. During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.*
> *Explanation.— For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."*

46. ***The following conditions ought to be fulfilled for the doctrine of lis pendens to apply****:*

a. There must be a pending suit or proceeding;
b. The suit or proceeding must be pending in a competent court;
c. The suit or proceeding must not be collusive;
d. The right to immovable property must be directly and specifically in question in the suit or proceeding;
e. The property must be transferred by a party to the litigation; and
f. The alienation must affect the rights of any other party to the dispute.

47. In short, the doctrine of lis pendens that Section 52 of the Transfer of Property Act encapsulates, ***bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings*** *even if he did not have notice of the suit or proceeding. The principle on which* *this doctrine rests was explained by Lord Turner in Bellamy v. Sabine as follows:*

> *"It is, as I think, a doctrine common to the courts both of Law and Equity and rests,* ***as I apprehend, upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every*** *case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings."*

[Emphasis Supplied]

9.2 In the present case, the Respondent No.1 does not wish to transfer the Suit Property, she only seeks recovery of the same and mesne profits/damages for use of the Suit Property by the Petitioner. Thus, the contention of the Petitioner is untenable.

9.3 In any event, the Petitioner/Defendant No.2 has not clearly established as to which proceedings before a Court are pending wherein the right to title of the Suit Property was also directly and substantially in issue. Thus, Section 52 of the TP Act is not applicable in the facts of the present case.

10. It is the contention of the learned Counsel for the Petitioner that the suit is barred under the provisions of Order VII Rule 11(d) of the CPC, which provides for rejection of the plaint if the suit is barred by any law.

10.1 The Supreme Court in the ***Kamala & Ors.*** case has held that barred by law means barred by a specific law and such a conclusion has to be drawn from the averments made in the plaint. The relevant extract is reproduced 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***

> ***<u>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.</u>*** *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.*
>
> *xxx xxx xxx xxx*
>
> *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."*
>
> [Emphasis Supplied]

11. The ground urged by the Petitioner is that the suit is barred by Section 17 of the Registration Act since there is no registered lease deed executed between the parties and thus, the suit is barred by law.

11.1 This contention of the Petitioner is without any merit. Section 17 of the Registration Act provides for documents which require compulsory registration. It does not act as a bar to file a suit. Section 17(1)(d) of the Registration Act reads as follows:

> *"17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*
>
> *xxx xxx xxx xxx*
>
> *(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;…"*

11.2 Section 49 of the Registration Act outlines the legal consequences of not registering documents that are compulsorily required to be registered. It states that such documents cannot be used as evidence in a Court. It is apposite to extract Section 49 of the Registration Act below:

> *"49. **Effect of non-registration of documents required to be registered.**—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*
>
> *(a) affect any immovable property comprised therein, or*
>
> *(b) confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*
>
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."*

11.3 A plain reading of this provision also shows that it does not bar a suit if the document is not registered. In any event, barred by law under Order VII Rule 11(d) of the CPC means barred by a specific law and as stated above, the provision of Section 17 of the Registration Act, does not provide for any such bar.

12. Neither the provisions of Section 52 of the TP Act bar the suit filed by the Respondent No.1 nor does Section 17 or 49 of the Registration Act, 1908 do so. The grounds taken by the Petitioner are thus without any merit.

13. In view of the aforegoing discussions, this Court finds no infirmity with the Impugned Order which would merit interference by this Court.

14. The Petition is accordingly dismissed with costs in the sum of Rs.20,000/- payable to *"DHCBA Cost A/c No. 15530110179338"*. The proof of costs shall be filed within a period of six weeks before the learned Trial Court.

15. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

16. The parties shall act based on a digitally signed copy of this order.

TARA VITASTA GANJU, J

MAY 28, 2025/ *ha*

Click here to check corrigendum, if any