

\$~20 (2022 Cause list)

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

Date of Decision: 19th January, 2022

+ CM(M) 69/2022

**CAPITAL LAND BUILDERS PVT LTD
& ORS.**

..... Petitioners

**Through: Mr. Gyaneshwar Narayan,
Advocate.**

versus

SHIV KUMAR JINDAD & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (ORAL)

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 3466/2022 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 69/2022

1. This petition under Article 227 of the Constitution is directed against an order dated 13.09.2021 passed in CS No. 702/18, by which the learned Senior Civil Judge, North-East, Karkardooma Courts, Delhi, has rejected the application of the petitioner-defendants herein

under Order VII Rule 11 of the Code of Civil Procedure, 1908 [“CPC”].

2. The respondent Nos. 1 to 36 [“the plaintiffs”] filed the suit before the Trial Court on 02.11.2018, arraying the petitioners herein and the respondents No. 37 to 40 as defendants in the suit. The plaintiffs claimed to be the owners in possession of undivided shares in land measuring about 800 Bighas in various Khasra Nos. in village Gokulpur, Delhi – 110094. As against the petitioners, the plaintiffs’ principal claim is for a declaration against a sale deed executed by one M/s. G.S. Kashyap and Sons (HUF) in favour of the petitioner No.1 herein, and as also an injunction against the petitioners from creating third-party interests in the said land. The plaintiffs also made three applications for injunction under Order XXXIX Rules 1 and 2 of the CPC.

3. The petitioners filed a written statement on 12.12.2018 and thereafter also made an application under Order VII Rule 11 of the CPC. In the said application, the petitioners contended that the plaintiffs had filed no title documents in support of their claim of ownership, and had only filed revenue records which were insufficient to establish title. It was further submitted that the plaintiffs’ claim of possession was false.

4. By the impugned order dated 13.09.2021, the learned Trial Court has rejected the petitioners’ application under Order VII Rule 11 of the CPC, recording the following findings:-

- a) Although the Trial Court has found that the plaintiffs have not filed any registered documents or title documents pertaining to

the suit property, it has been held that the sufficiency of the evidence placed by the plaintiffs is required to be considered at trial and not in an application for rejection of the plaint.

- b) The Trial Court has found that the plaintiffs have made a categorical statement in the plaint that they are in possession of the suit property, and that the veracity of the said contention cannot be adjudicated in an application under Order VII Rule 11 of the CPC.
 - c) On the petitioners' contention regarding limitation, the Trial Court has found that it is a mixed question of law and fact, which must be considered after evidence.
 - d) The petitioner had also raised an argument regarding the maintainability of the suit in view of the provisions of the Delhi Land Reforms Act, 1954 ["DLR Act"]. The said plea has also been rejected on the grounds that the plaintiffs had averred in the plaint that the suit property falls within the limits of the Municipal Corporation by reason whereof the DLR Act could not apply.
5. Mr. Gyaneshwar Narayan, learned counsel for the petitioners, submits that the impugned order suffers from a manifest error, inasmuch as the learned Trial Court has failed to consider the insufficiency of the documents placed by the plaintiffs in support of their claim in respect of their title to the suit property. He points out that, by a separate order of the same date [13.09.2021], the Trial Court had rejected the applications of the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC, finding that the plaintiffs had failed to make

out a *prima facie* case in their favour. Mr. Narayan submits that the impugned order passed by the Trial Court under Order VII Rule 11 of the CPC is inconsistent with the order passed under Order XXXIX Rules 1 and 2 of the CPC.

6. Having heard learned counsel for the petitioners, I do not find any jurisdictional infirmity in the impugned order, so as to invite the supervisory jurisdiction of this Court under Article 227 of the Constitution. It is well settled that, for the purposes of rejection of the plaint under Order VII Rule 11 of the CPC, the Court is duty bound to consider the contents of the plaint, and not to examine the sufficiency of the evidence or the defence put forth by the defendant. Several judgments of the Supreme Court make this position clear, including *Saleem Bhai and Others vs. State of Maharashtra and Others*¹, *Popat and Kotecha Property vs. State Bank of India Staff Association*² and *Urvashiben and Another vs. Krishnakant Manuprasad Trivedi*³.

7. The Trial Court has cogently analysed the grounds taken by the petitioners and come to a conclusion that they do not fall within the scope of Order VII Rule 11 of the CPC. I do not find any jurisdictional defect or perversity in the said order so as to attract the supervisory jurisdiction of this Court under Article 227 of the Constitution.

8. Mr. Narayan's submission that the impugned order is inconsistent with the order passed on the same date rejecting the applications of the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC is also misplaced. The relevant standard by which the plaintiffs'

¹ (2003) 1 SCC 557 [paragraph 9]

² (2005) 7 SCC 510 [paragraphs 10-23]

³ (2019) 13 SCC 372 [paragraph 20]

case is adjudged under the two provisions are entirely different. For the purposes of an order under Order VII Rule 11 of the CPC, the Court must come to the conclusion that the plaint is required to be rejected i.e., that the suit must terminate right there. In the plaintiffs' applications under Order XXXIX Rules 1 and 2 of the CPC, however, the examination is as to whether a *prima facie* case has been established by the plaintiffs in their favour. As in the present case, it is quite possible that the Court would find against the plaintiffs on the question of *prima facie* case and yet find that the plaint is not liable to be rejected under Order VII Rule 11 of the CPC.

9. For the aforesaid reasons, I am not inclined to entertain the present petition under Article 227 of the Constitution, which stands dismissed.

JANUARY 19, 2022

'Bp'

PRATEEK JALAN, J

भारत्यमेव जयते