



2025:DHC:4952



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

% Judgment delivered on: 11.06.2025

+ **C.R.P. 67/2025 & CM APPL. 12227/2025**

MOHD YAMIN

.....Petitioner

versus

MOHD HASAM

.....Respondent

**Advocates who appeared in this case:**

For the Petitioners : Mr. Sumit Kumar Rana & Mr. Amit Yadav,  
Advs.

For the Respondents :

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petition is filed challenging the order dated 10.12.2024 (hereafter '**impugned order**'), passed by the learned Additional Senior Civil Judge/ Guardian Judge, Karkardooma Court, Delhi ('ASCJ') in CS No. 5210/2015, whereby the application filed by the petitioner/ defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') was dismissed.



2. The suit is filed by the respondent/ plaintiff seeking mandatory and permanent injunction, recovery and damages/ mesne profits. The plaintiff claimed that he along with co-owner namely– Ms. Hazara Firdus had purchased the property area measuring 100 sq. yds bearing No. E-156, out of Khasra No.337, near Nav Prakash Public School, Main 60 Foota Road, Shaitan Chowk, Sri Ram Colony, Rajiv Nagar, Khajuri, Delhi-110094, (hereinafter called “**suit property**”) from a person namely– Shahid Ahmad Fahimuddin on 23.06.2003. After the possession of the suit property was handed over, the plaintiff and the co-owner constructed a shop, two rooms, kitchen, toilet and bathroom and obtained electricity connection in their name.

3. It is claimed that the defendant sold biryani on a rehri, opposite side to the suit property, on whose request, the plaintiff gave one room of the suit property, along with one kitchen, open verandah and bathroom (hereafter ‘suit premises’) to the defendant and his family members, on humanitarian grounds. It is stated that after a substantial time, when the plaintiff requested the defendant to vacate the suit premises, the defendant refused to vacate the same on the pretext of the wedding of his daughter, and thereafter, on a number of occasions, he refused to vacate he suit premises on one pretext or another.

4. It is claimed that on 18.03.2013, on the request of the plaintiff, the defendant assured to vacate the premises on 30.03.2013. On the said day, when the plaintiff approached the defendant to vacate the suit premises, the defendant and his family members used filthy



language and refused to vacate the suit premises, claiming to have purchased the same from the plaintiff on the basis of forged and fabricated documents being bayana agreement dated 04.04.2006, affidavit dated 04.04.2006, undated receipt of ₹5,00,000/- and agreement to sell dated 18.11.2012. Complaints were made in this regard to ACP, Police Station Khajuri Khas, on which the investigation revealed that the bayana agreement and affidavit dated 04.04.2006 were forged and fabricated, wherein the stamp paper of ₹50/- Bearing No. AA563162 and stamp paper of ₹10/-bearing No. 52AA137778 were issued by the Delhi Treasury in the year 2012 and that these stamp papers were issued in the name of some other persons. Moreover, the notary seals affixed on the said documents were also fabricated by the defendant. FIR No. 322/ 2013 dated 25.06.2013 is stated to have been registered in this regard under Sections 420/468/471/120B/ 34 of the Indian Penal Code, 1860.

5. It is stated that on the strength of the aforesaid forged and fabricated documents, the defendant also filed a frivolous suit bearing No. 53/2013 for specific performance. The plaintiff issued a legal notice dated 09.04.2014 upon the defendant, withdrawing the permission granted to reside in the suit premises and calling upon the defendant to pay arrears of electricity bills since April, 2011 being approximately ₹1250/- per month and to handover the possession of the suit premises to the plaintiff, within a period of 15 days. It is stated that despite the service of the legal notice, the defendant failed to



comply with the same, which led the plaintiff to file the suit for mandatory and permanent injunction, recovery and damages/ mesne profits.

6. The application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') was filed by the petitioner for rejection of the plaint, claiming that the suit is not maintainable.

7. It is the case of the defendant that since the application filed by the plaintiff under Order VI Rule 17 of the CPC was dismissed *vide* order dated 23.12.2021 passed by the learned ASCJ and no relief has been sought by the petitioner for the declaration of the bayana agreement and affidavit dated 04.04.2006 as null and void, the suit for mandatory and permanent injunction is not maintainable.

8. The learned senior counsel for the petitioner submitted that even the learned ASCJ on 22.04.2019 had questioned the maintainability of the suit, as the respondent had initially filed a suit for possession and thereafter, he filed an application under Order VI Rule 17 of the CPC seeking amendments in the plaint, which was allowed by the learned ASCJ *vide* order dated 29.04.2016, thereby changing the nature of the suit from one for possession to a suit for injunction.

9. He submitted that subsequently, another application under Order 6 Rule 17 of the CPC was filed by the respondent, seeking declaration of the bayana agreement and affidavit dated 04.04.2006 as null and void, in order to fill up lacunas and defects in the suit,



however the same came to be disallowed by order dated 23.12.2021, rendering the suit not maintainable in the eyes of law.

10. He submitted that in such circumstances, the suit ought to be dismissed for lack of cause of action as the same is a simplicitor suit for injunction and without seeking declaration of the bayana agreement and the affidavit dated 04.04.2006 to be forged and fabricated, suit is not maintainable under Order VII Rule 11 of the CPC and the Specific Relief Act, 1963.

11. This Court heard the counsel and perused the record.

12. At the outset, it is relevant to note that the petitioner has challenged the impugned order by invoking the revisional jurisdiction of this Court. It is trite law that the scope of revision under Section 115 of the CPC is very limited and is to be exercised only if the subordinate Court appears to have exceeded its jurisdiction or to have failed to exercise its jurisdiction, or if the subordinate Court has exercised its jurisdiction illegally or with material irregularity.

13. The law in regard to rejection of the plaint under Order VII Rule 11 of the CPC is well settled. The aforesaid provision empowers the Court to summarily dismiss a suit at the very threshold, even before the plaintiff has had an opportunity to lead evidence and establish its case, if it is found that one of the conditions specified therein is met. The objective of the provision is to quell bogus and meaningless suits at the outset when the said suits *ex facie* appears to



be an abuse of the process of law. [Ref. ***Dahiben Vs. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366***]

14. In the impugned order, the learned ASCJ rightly appreciated that for deciding an application under Order 7 rule 11 of the CPC, the Court only has to look into the averments in the plaint and attached documents. The learned ASCJ has dealt with the argument of the petitioner that no declaration has been sought by the plaintiff in respect of the bayana agreement and affidavit dated 04.04.2006 to render them null and void. The learned ASCJ held that the reliefs sought by the plaintiff in the suit are not consequential to the relief of declaration and that merely the failure of the plaintiff to seek declaration to render the bayana agreement and affidavit dated 04.04.2006 null and void, would not *ipso facto* make the suit not maintainable. It was also noted that the said documents even otherwise do not transfer the title of the suit premises to the defendant. The learned ASCJ was of the view that the plaintiff is the *dominus litis* and can decide on the reliefs that he seeks from the Court.

15. A bare perusal of the plaint shows that as per the plaintiff, he along with the co-owner were in possession of the suit property, after having purchased the same in the year 2003 and after the execution of the following documents- (i) General Power of Attorney duly registered with sub Registrar Delhi, (ii) Agreement to Sell, (iii) Will duly registered *vide* Registration No. 310 with Sub Registrar, Delhi, (iv) Affidavit, (v) Receipt, (vi) Possession Letter. The defendant was



granted permission by the plaintiff's son to live in the suit premises, on humanitarian grounds. The plaintiff thereafter requested the defendant to vacate the suit premises on a number of occasions, however the defendant refused to vacate the same on one pretext or another.

16. It is shown that the plaintiff obtained electricity connection in the suit property in the year 2006 *vide* CA 101380204, whereafter he was residing there. It is stated that thereafter, the plaintiff and his family members shifted to their native place of residence, leaving behind his son and the co-owner of the property at the suit property, after which the co-owner obtained a commercial electricity connection for the suit property in the year 2011.

17. It is also pertinent to note that the FIR No. 322/2013 has been registered against the defendant for forging and fabricating documents in regard to the suit premises, under Sections 420/468/471/120B/34 of the IPC, on a complaint made by the plaintiff. Furthermore, the legal notice duly served upon the defendant has also not been replied to. The plaint *prima facie* reveals that the defendant has been in wrongful possession of the suit premises.

18. The Hon'ble Apex Court in ***M.S. Ananthamurthy v. J. Manjula* : 2025 SCC OnLine SC 448**, shed some light on the issue of whether a specific prayer for declaration is necessary when dealing with an unregistered document that creates an interest in an



immovable property, and how this might impact the legal rights of both parties involved. The Hon'ble Court held as under:

*“54. This principle was recently elaborated by the High Court of Karnataka in Channegowda v. N.S. Vishwanath, reported in 2023 SCC OnLine Kar 153. The relevant portion is reproduced as under:—*

*“14. An attempt is made on behalf of the plaintiffs to contend that the second plaintiff has sold the property as a General Power of Attorney Holder and not as a title holder. It is argued that the Power of attorney is not compulsorily registrable. The submission is noted with care. Suffice it to note that a deed of power of attorney is not one of the instruments specified under Section 17 of the Registration Act compulsorily registrable. However, if a power has been created empowering the attorney to sell the property i.e., if a document that gives a right to the attorney holder to sell the immovable property, then it would be a document creating an interest in immovable property, which would require compulsory registration. In the present case, the General Power of Attorney alleged to have been executed by defendants 1 to 3 in favor of the second plaintiff is coupled with interest i.e., power of alienation is conferred but it is not registered. The Apex Court in the SURAJ LAMP's case has held that the General Power of Attorney Sale, or Sale Agreements/Will do not convey title and do not amount to transfer, nor can they be considered valid modes of transfer of immovable property. Therefore, it can be safely concluded that the declaration of facts/statement of facts (affidavit) and General Power of Attorney do not convey title. They are inadmissible in evidence.”*

*(Emphasis supplied)*

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*iv. Effect of Suit for Injunction simpliciter*

*57. The appellants submitted that the answering respondent had not challenged the validity of the GPA and the agreement to sell dated 04.04.1986 executed in favour of the holder and registered sale deed dated 01.04.1998 executed in favour of appellant no. 2. The appellants' submission does not hold good, as the absence of a separate suit for declaration or even a specific prayer to that*





**effect does not alter the legal position of either party in the facts of this case. The legal standing of both parties remains unaffected, for want of a distinct challenge to the instruments in question.**

58. Where the question of title is “directly and substantially” in issue in a suit for injunction, and where a finding on an issue of title is necessary for granting the injunction, with a specific issue on title raised and framed, a specific prayer for a declaration of title is not necessary. As a result, a second suit would be barred when facts regarding title have been pleaded and decided by the Trial Court. In the present suit, the findings on possession rest solely on the findings on title. The Trial Court framed a categorical issue on the ownership of the appellants herein. **To summarize, where a finding on title is necessary for granting an injunction and has been substantially dealt with by the Trial Court in a suit for injunction, a direct and specific prayer for a declaration of title is not a necessity.”**

(Emphasis supplied)

19. Section 17 (1) (c) of the Registration Act, 1908 mandates the registration of non-testamentary instrument which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest. At this juncture, it is pertinent to note that the documents relied upon by the petitioner are unregistered documents.

20. Thus, this Court finds no infirmity in the decision of the learned ASCJ that the declaration of the bayana agreement and the affidavit dated 04.04.2006 would even otherwise, not affect the rights of the plaintiff over the suit property and therefore it cannot be said, at this stage, that the plaint is lacking cause of action. The failure of the plaintiff to seek declaration of the defendant’s documents as null and



void may be used as a defense by the defendant, it would not however outrightly render the suit unmaintainable.

21. In the case of ***Kamala v. K.T. Eshwara Sa : (2008) 12 SCC 661***, the Hon'ble Apex Court highlighted that a question that involves both legal and factual aspects—which may need not just a review of the plaint but also additional evidence, can be considered either as a preliminary issue or during the final hearing. However, it cannot be conclusively decided at the stage of dealing with an application under Order VII Rule 11 of the CPC. It was held as under:

**“22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.**

**23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.**

**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.**

**25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the**



subject-matter thereof, the application for rejection of plaint should be entertained.

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**33. Whether the suit would be maintainable, if the plaintiff had not questioned the validity of deeds of sale, is not the question which can be answered by us at this stage.**

34. The only contention raised before the learned trial Judge was the applicability of the principles of res judicata. Even for the said purpose, questions of fact cannot be gone into. What can only be seen are the averments made in the plaint. What inter alia would be relevant is as to whether for the said purpose the properties were sold by reason of any arrangement entered into by and between the parties out of court; whether they had accepted the partition or whether separate possession preceded the actual sale; or whether the contention that a presumption must be drawn that for all practical purposes the parties were in separate possession, are again matters which would not fall for consideration of the court at this stage.

**35. The appellant-plaintiffs might not have prayed for any decree for setting aside the deeds of sale but they have raised a legal plea that by reason thereof the rights of the coparceners have not been taken away. Their status might not be of the coparceners, after the preliminary decree for partition was passed but as we have indicated hereinbefore the same cannot be a subject-matter of consideration in terms of Order 7 Rule 11(d) of the Code.**

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40. Order 7 Rule 11(d) of the Code serves a broad purpose as has been noted in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [(2004) 9 SCC 512] in the following terms: (SCC p. 560, para 133)

“133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. **Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose.** A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a



litigant. (See *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315], SCC at pp. 324-35.)”

But therein itself, it was held: (SCC p. 562, para 139)

“139. Whether a complaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the complaint itself. For the said purpose the averments made in the complaint in their entirety must be held to be correct. The test is as to whether if the averments made in the complaint are taken to be correct in their entirety, a decree would be passed.”

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44. In *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510] the question which arose for consideration was as to whether the suit was barred by limitation. It was held: (SCC p. 517, paras 22-23)

“22. There is distinction between ‘material facts’ and ‘particulars’. The words ‘material facts’ show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or complaint becomes bad. The distinction which has been made between ‘material facts’ and ‘particulars’ was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.* [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)]

23. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word ‘shall’ is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the complaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the complaint under Rule 11 does not preclude the plaintiffs from presenting a fresh complaint in terms of Rule 13.”

This Court opined that therein questions of fact were to be determined.”

(emphasis supplied)



22. In this regard, the pleas made by the parties would require evidence as it is the case of the plaintiff that the defendant is in wrongful possession of the suit premises, which is co-owned by the plaintiff and that he has made several attempts to get the premises vacated, but to no avail. Whereas the defendant claims to have purchased the said premises from the plaintiff and is rightfully residing in the same.

23. While deference has been paid to the argument raised by the petitioner in relation to no declaration being sought by the plaintiff, the defence of a defendant is not required to be taken into account while deciding an application under Order VII Rule 11 of the CPC and only the plaint is to be considered. In such circumstances, the matter would require consideration of evidence and warrants a trial, as a *prima facie* case of accrual of cause of action has been made out by the plaintiff by perusing the substance of the averments.

24. In ***I.T.C. Ltd. v. Debts Recovery Appellate Tribunal : (1998) 2 SCC 70***, it was held that the fundamental issue to be considered while deciding an application under Order VII Rule 11 of the Code is whether the plaint discloses a genuine cause of action or merely presents an illusory one in an attempt to evade rejection under Order VII Rule 11.

25. The Hon'ble Apex Court in ***Saleem Bhai v. State of Maharashtra : (2003) 1 SCC 557***, summarised the scope of power



with a Court in rejecting a plaint under Order VII Rule 11 (a) and (d) of the CPC. The Hon'ble Court held as under:

*“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”*

26. In the opinion of this Court, when there is a mixed question of fact and law, the same has to be determined after parties lead their evidence. The assertions made by the plaintiff cannot be rejected in the application under Order VII Rule 11 of the CPC, as observed in the various judgements of the Hon'ble Apex Court, as discussed above.

27. Thus, this Court is of the view that the plaint discloses a cause of action which cannot be shut out at the threshold. The learned ASCJ acted within its jurisdiction in refusing to reject the plaint as the parties will have the opportunity to prove their case during evidence.



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28. In view of the above, this Court finds no jurisdictional error or perversity in the trial court's order rejecting the application filed by the petitioner under Order VII Rule 11 of the CPC.

29. The present petition is dismissed in the aforesaid terms. Pending application(s) also stands disposed of.

**AMIT MAHAJAN, J**

**JUNE 11, 2025**