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THE HIGH COURT OF DELHI AT NEW DELHI
CM (M) 1311/2011

Date of Decision: 13.07.2012

LT. COL. ATUL MANI CHOPRA **Petitioner**
Through: Mr. P.P.Ahuja, Adv.

Versus

LT. COL. MANU BHALLA & ORS. **Respondents**

Through: Mr.Sanjay Kumar, Adv. for
defendant No.5.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This petition under Article 227 of the Constitution challenges the order dated 7.7.2011 of Addl. District Judge dismissing the application of the petitioner (defendant No. 2 therein) under Order 7 Rule 11 CPC in suit No. 185/2007 (renumbered as suit No. 260/2010).

2. The aforesaid suit was filed by Lt. Col. Manu Bhalla and others against M/s. Hindustan Cable Ltd. as defendant No. 1 and the petitioner as defendant No. 2 for possession, recovery of damages, mesne profits and injunction. The petitioner herein moved the application under Order 7 Rule 11 CPC for rejection of the plaint mainly on the ground that he was the adopted son of his father K.C.Chopra and after the death of his father, he became *karta* of his HUF namely K.C.Chopra and sons (HUF). It was averred that in his capacity as *karta*, he had filed a suit

for rent, damages and injunction against their tenant M/s. Hindustan Cable Ltd. vide suit No. 1380/1990. In the said suit, Smt. Adarsh Bhalla, daughter of late K.C.Chopra was impleaded as defendant No. 2, but subsequently deleted by him. The said suit was filed in the High Court, but subsequently transferred to the court of ADJ, where it was renumbered as 263/06/98. It was his case that in the said suit, the learned ADJ vide order dated 1.07.2003 had directed the tenant M/s. Hindustan Cable Ltd. to deposit amount equivalent to last month rent @ Rs. 10,000/- per month. It was also his case that during the life time of Smt. Adarsh Bhalla, she did not claim any share in the suit property and even after her death, the plaintiffs, who claimed themselves to be her legal heirs, never set up any such claim, in any manner.

3. It was however on the order of this court that the plaintiff No. 1 Lt. Col. Manu Bhalla (respondent No. 1 herein) was impleaded as a defendant therein. He alleged that since no adverse claim was made by anyone, and the period of 12 years having expired, he has also become owner of the suit property by adverse possession after the death of his father K.C.Chopra on 14.1.1989. It was alleged that the instant suit filed by the plaintiffs was not maintainable and liable to be rejected inasmuch as the suit already filed by him wherein plaintiff No. 1 was a party was pending adjudication before the court of ADJ.

4. The pleas which have been raised before this court are the same which were raised before the learned ADJ that the agreement to sell dated 16.12.1985 did not confer any title of ownership of the suit

property in favour of the plaintiffs, they cannot derive any right therefrom and thus have no locus standi to file a suit for possession. Reliance was placed on the case of **Madan Lal Vaid Vs. Nand Kumar Walia and Another**, 96 (2002) Delhi Law Times 119. Another contention that was raised before this court and also before the learned ADJ was that the suit filed by the plaintiffs was barred by limitation and also because of the petitioner having already filed a suit being 263/06/98 pending adjudication before the court of ADJ.

5. With regard to the plea of the petitioner regarding the plaintiffs not being the owner of the suit property, the learned ADJ repelled the submission by reasoning as under:

“The plea raised by the defendant no. 2 is that since the plaintiffs have no registered document in their favour, hence, they are not the owner of the suit property. The issue of ownership of the plaintiffs over the suit property is a question of fact which cannot be decided without trial of the suit. It is only while deciding the issue of ownership, the effect of non-registration of the document on the rights of the plaintiff can be ascertained”.

6. The plea regarding suit being barred on account of limitation and pendency of the suit of the petitioner in the court of ADJ, was rejected by ADJ reasoning as under:

“It is not the case of the defendant no. 2 that it is the plaintiffs who filed the suit no. 263/2006/98. Further, the defendant no. 2 has failed to show that the present suit is barred under law because of the pendency of the said suit.

So far as the plea of limitation is concerned, in prayer clause 3 of the plaint, the plaintiffs claimed the damages w.e.f. 31.08.2004 or the end of tenancy month which the defendant no. 1 deems to the tenancy month which was expired after 15 days of receipt of the notice dated 05.07.2004. As such, the exact date to claim the damages is a mixed question of law and fact”.

7. On the premise of the aforesaid reasons, the learned ADJ observed that the plaint disclosed cause of action and consequently, dismissed the application of the petitioner. This order has been challenged before this court. As is noted above, the pleas raised before this court are similar which had been raised before the learned ADJ. In support of the pleas, the learned counsel for the petitioner has relied upon some judgments in the petition itself. It is noticed that reliance on some of these judgments is misplaced, whereas in some others, the law as regard to under Order 7 Rule 11 CPC is reiterated that in a given case, the court could exercise its powers under Order 7 Rule 11 CPC to reject the plaint at any stage in case the plaint manifestly does not disclose a clear right to sue and was vexatious and meritless.

8. Having gone through the averments of the suit No. 185/2007 (renumbered as 260/2010) wherein the instant application under Order 7 Rule 11 CPC was filed, I do not see any infirmity or illegality in the impugned order. The plaintiffs therein have set up their case seeking possession of suit premises from the tenant as also for recovery of damages, mesne profits etc. on the averments and cause of action in their independent right. The plea regarding the agreement being non-registered, could not be the ground for rejection of the plaint outrightly. The effect of non-registration of the documents could only be

determined after the trial. Having regard to the nature of controversy going on between the parties, the evidentiary value of unregistered document for collateral purposes also cannot be overlooked. The pendency of a suit filed by the petitioner alleging himself to be the *karta* of HUF of his father, was yet to be adjudicated. The plaintiffs have claimed damages and mesne profits from the tenant M/s. Hindustan Cables Ltd. in the backdrop of the fact that the petitioner is recovering rent from this tenant by virtue of the order passed by the learned ADJ. The plaintiffs have disputed this entitlement of the petitioner on various grounds and have also claimed themselves to be entitled for the same. The instant suit could not to be said to barred due to the pendency of the suit filed by the petitioner or on account of the alleged limitation since the plaintiffs have claimed damages w.e.f. 31.8.2004. All these issues which have been raised in the instant suit by the plaintiffs (respondents herein) are triable. I do not see any infirmity or illegality in the impugned order. The petition merits dismissal and is hereby dismissed. In the last, it is observed that it would be expedient in the interest of justice that the suit filed by the petitioner herein pending in the court of ADJ and the instant suit need to be tried by one court and for which any of the parties would be at liberty to seek trial of both the cases by one court. Petition stands dismissed accordingly.

M.L. MEHTA, J.

JULY 13, 2012/akb