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3 Defendant No.3 filed application under Order VII Rule 11 CPC and sought rejection of plaint claiming that the plaintiff has based his right on the agreement to sell which is not document of title. Mere declaration of suit was not maintainable under Section 34 of the Specific Relief Act, 1963 (for short the 1963 Act) and that the agreement to sell is not properly stamped. Trial Court has dismissed the application holding that at this stage wherein the Court has been called to adjudicate upon application filed under Order VII Rule 11 CPC only contents of plaint need to be considered. There being no plea as to under which law the plaint can be held to be barred, the application *sans* merit.

4 Mr. Jaideep Verma, Advocate for the petitioner while assailing the impugned order submits that the agreement to sell propounded by the plaintiff being not document of title, present suit for declaration was not maintainable. Further submits that the suit is barred under Section 34 of the 1963 Act. He further asserted that prayer No.3 itself shows that the plaintiff is not in possession of the suit property and thus the present suit filed to challenge sale deed after 12 years barred by limitation as the plaintiff has not made any prayer seeking specific performance of the agreement to sell.

5 *Per contra* Mr. Ishan Gupta, Advocate for respondent No.1 submits that similar application was moved earlier by defendant No.1. The same was dismissed vide order dated 31.03.2017 and thus the present application filed by defendant No.3 is nothing but an abuse of process of law.

6 I have heard learned counsel for the parties and have gone through the records of the case.

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7 In order to appreciate the contention raised by learned counsel for the parties, it will be apt to peruse provision as contained under Order VII Rule 11 CPC which reads as under :-

“11. Rejection of plaint.

The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

8 Trite it is that it is only the plaint that has to be considered to adjudicate upon application under Order VII Rule 11 CPC. Perusal of the plaint would reveal that plaintiff claims that there is an agreement to sell in his favour dated 10.03.1982 whereby he parted with whole of the sale consideration and was put in possession of the plot by Gurcharan Singh. The plaintiff on the basis of the said agreement to sell thus claims that

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defendant No.2 had no right to execute registered sale deed in favour of defendant No.1. In view of above, this Court does not find any merit in the arguments raised by counsel for the petitioner-defendant No.3 that agreement to sell being not a document of title cannot be considered.

9 Coming on to the plea raised on the basis of Section 34 of the Specific Relief Act, 1963, the same reads as under :-

“34. Discretion of court as to declaration of status or right.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

10 As per the provision wherever the plaintiff is entitled to claim a relief over and above mere relief of declaration but fails to do so, the suit would be barred. Prayer clause would reveal that apart from seeking decree of declaration plaintiff has also sought decree of permanent injunction and mandatory injunction. So far as the non-filing of the suit for specific performance by the plaintiff is concerned, the same may constitute a defence for the defendant but the same would not have an effect of closing the door by rejecting the plaint at this stage for the plaintiff.

11 In view thereof this Court does not find that the trial Court committed any material irregularity or illegality in dismissing the application filed by the defendant No.3 seeking rejection of plaint.



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12 Finding no merits in the present revision petition, the same is ordered to be dismissed.

18.03.2025

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No