

CIVIL SUIT 1524/2025
AFSAR ALI VS. VAKIL

22.07.2026

At 2:00 PM

PRESENT: Sh. M.K. Bhardwaj, Ld. Counsel for plaintiff.
Sh. Yogesh, Ld. Proxy Counsel for defendant No.1 and 2
through VC.

Submissions of learned counsel for plaintiff heard.

Be put up for orders at 4:00 PM.

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Date: 2026.07.22
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(ARJINDER KAUR)
JSCC/ASCJ/GJ, SHAHDARA,
KKD COURT, DELHI/22.07.2026

At 3:00 PM

PRESENT: Dr. Gaurav Manuja, Ld. Counsel for defendant No.1 and 2
through VC.

Submissions of learned counsel for defendant heard.

Put up for order at 4:00 PM.

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(ARJINDER KAUR)
JSCC/ASCJ/GJ, SHAHDARA,
KKD COURT, DELHI/22.07.2026

At 4:00 PM

PRESENT: None.

It is submitted by learned counsel for plaintiff that plaintiff is the lawful occupant / owner of flat bearing No. L-136, L Block, Sundar Nagari, Delhi and defendant No.1 and 2 are the residents of ground floor i.e. L-125 and L-126, who have illegally dug a pit and raised concrete pillars and a slab over the government street / land, amounting to encroachment upon a public land. That despite complaints to defendant No.3 to 7,

defendants have not cared to look into the matter. Hence, plaintiff left with no other remedy except to file the present suit.

Report of ASI Upendera Singh, PS Nand Nagari and Executive Engineer (Bldg.)-I, Shahdara (North) Zone perused.

At the very outset it is pertinent to mention that it is bounden duty of every civil court to check the maintainability of the plaint in light of the provisions contained in Order VII Rule 11 CPC. The relevant legal provisions were recently discussed and reiterated by the hon'ble Supreme Court in 2026 INSC 465 The relevant extracts are being reproduced hereunder:-

14.1. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the Plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 Code of Civil Procedure and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, Sub-clauses (a) and (d) are stand alone grounds, that can be raised by the Defendant in a suit. However, it cannot be ruled out that under certain circumstances, Clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint Under Order VII Rule 11 Code of Civil Procedure, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.

15. Order VII Rule 11(a) Code of Civil Procedure mandates rejection of the plaint where it does not disclose a cause of action. In Om Prakash Srivastava v. Union of India and Anr. (MANU/SC/3240/2006 : 2006:INSC:463 : (2006) 6 SCC 207), this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the Plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the Plaintiff to sue and breach or violation by the Defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the Defendant, the cause of action should be deemed to be unreal. This is where the substantive laws like Specific Relief Act, 1963, Contract Act, 1872, and Transfer of Property Act, 1882, come into operation. A pure question of law that can be decided at the early stage of litigation, ought to be decided at the earliest stage.....”

Also in ***Dahiben vs. Arvindbhai Kalyanji Bhanushali 2020 NSC***

450, wherein hon’ble Supreme Court observed as under:-

.....23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M. V. Sea Success I which reads as: (SCC p.562, para 139)

“139. Whether a plaint 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 plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12 In *Hardesh Ores (P.) Ltd. v. Hede & Co.* (MANU/SC/7671/2007: 2007:INSC:576 : (2007) 5 SCC 614) the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* (MANU/SC/0154/1999: 1999:INSC:97 : (1999) 3 SCC 267).....

24.2. In *T. Arivandandam v. T.V. Satyapal* MANU/SC/0034/1977: 1977:INSC:204 : (1977) 4 SCC 467 this Court held that while considering an application Under Order VII Rule 11 Code of Civil Procedure what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)

“5. ...The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power Under Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ...”

24.3. Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal* (MANU/SC/0968/1998 : (1998) 2 SCC 170) this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal* (MANU/SC/0485/2017 : 2017:INSC:366 : (2017) 13 SCC 174) held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and

determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

In ***"Keshav Chander Thakur & Anr. Vs. Krishan Chander & Anr., RFA(OS) 86/2013, Delhi High Court, decided on 19.05.2014"***, it was observed by quoting another judgment reported as ***Temple of Thakur Sh. Mathura Dass Ji Vs. Sh. Kanhaiya Lal & Ors., 2008(1) INR (Rajasthan) 619:***

"If the suit is abusive of the process of the court and cannot be dismissed u/o VII Rule 11 CPC then the court is not helpless and can accordingly invoke the power u/s 151 CPC and can dismiss the suit u/s 151 CPC. Frivolous litigations are required to be nibbed in the bud at the earliest possible stage otherwise, no relief to the aggrieved party because of the reason that sole object of the frivolous litigation is to drag the adversary in the litigation till it is dismissed consuming several years in trial. If court reaches to the conclusion that the suit is frivolous from the totality of the fact brought on record or which have come on record, then, by not dismissing the suit at the earliest, the court virtually declares that a frivolous suit can deemed trial of suit and aggrieved party has no remedy against frivolous suit. If there are creases in law or sometime is left out or not specifically provided in statute then they are required to be ironed out by the court by interpreting the law in a manner to advance the cause of justice and no party can be left with no remedy against frivolous suit. At the cost of repetition, it is observed that continuous of frivolous suit against any person on the ground that it cannot be dismissed since there is no provision u/o VII Rule 11 CPC is virtually denying an aggrieved party his right to crush the frivolous litigation without suffering the trial of the suit."

In the present case the plaintiff has failed to plead that what injury to his rights is being caused due to alleged construction. Even no site plan has been filed along with the plaint to show / indicate any usurpation of gali as alleged in the plaint. Also, there is no indication in the site plan with regard to relative location of house of plaintiff qua the suit property. Plaintiff has not disclosed the floor

of his house and has just mentioned that the suit property is on the ground floor. When the plaintiff is admittedly residing on same upper floor, how his air / light is being affected by construction on ground floor has not been explained.

In the judgment titled as ***Rajinder Motwani vs. MCD RSA No.243/17 dated 16.10.2017***, the Hon'ble Delhi High Court in Para No. 8 held as under:

"an illegal construction in itself does not give any legal right to a neighbour. An illegal construction always no doubt gives locus standi to the focal municipal authorities to seek removal of the illegal construction, but a right of a neighbor only arises if the legal rights of light and air or any other legal right is affected by virtue of the illegal construction of the neighbor. Legal right to light and air is only in terms of section 15 of the Easement Act, 1882 which requires a cause of action to be laid out and proved that right to light and air has been enjoyed for 20 years and only on completion of 20 years there is right to acquisition by prescription in the easementary rights. It is relevant to note that even after acquisition of easementary rights of prescription, yet, right to injunction for a neighbor is not absolute and is covered by Section 33 of the Easement Act which requires that disturbance to the easementary rights must actually cause substantial damage to a neighbor of living in his own house or prevents the neighbor from carrying on his accustomed business in the dominant heritage/his own house. All these are factual aspects and admittedly there is no cause of action which is laid out in the plaint in terms of section 15 and 33 of the Easement Act that right to easement of the appellants/plaintiffs has become absolute as it has been enjoyed for 20 years and that in fact after rights to easement are acquired by prescription there is also a substantial damage to the appellant/plaintiffs or there is material interference in the physical comfort of the appellants/plaintiffs or the appellants/plaintiffs being prevented from carrying on his accustomed business on his accustomed business in their own dominant heritage/own property."

Thus, from the above judgment passed by the Hon'ble Delhi High Court, it is clear that merely by virtue of being neighbor or resident of locality, a person does not become entitled to file a suit to restrain other from carrying illegal construction. In order to have locus, the party filing the suit must show that by virtue of such construction his legal right to air or water or light has been affected or such construction is going to be detrimental to his own property, or his safety. Therefore, in view of the law quoted above, this court is of considered opinion that plaintiff has failed to disclose existence of any cause of action in favor of plaintiff, **hence the present plaint stands rejected under Order VII Rule 11 CPC.**

Application under Order XXXIX Rule 1 and 2 CPC and all other pending applications, if any, disposed off accordingly.

File be consigned to record room after due compliance.

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