



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

Date of Decision: 23rd April, 2025

+ CS(OS) 72/2022 & I.As. 2105/2022, I.A. 40283/2024

SMT. VANDANA DIXIT & ANR.Plaintiffs

Through: Mr. Atul Bandu, Advocate (Through
VC) with plaintiff in person

versus

SHRI KUMAR SAMBHAV MISHRA & ORS.Defendants

Through: Mr. A.P.S. Ahluwalia, Senior
Advocate with Mr. S.S. Ahluwalia,
Ms. Saniya Zehra, Mr. Yuvraj
Jaiswal, Advocates for D-1 to 3

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

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J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 40283/2024 (Application under Order VII Rules 7 and 11 CPC for rejection of plaint)

1. The present application has been filed by the Defendant Nos. 1, 2 and 3 under Order VII Rules 7 and 11 of the Code of Civil Procedure, 1908 ('CPC') seeking rejection of the plaint on the ground of inconsistent pleas and abuse of process of law.

Brief Facts

2. The underlying suit has been filed by the Plaintiffs seeking partition and permanent injunction *qua* the estate of Late Smt. Kanti Devi, more specifically, immovable property bearing Municipal No. 8642, Ward No.



XVI, Gali Gopal Wali, Gaushala Marg, Kishan Ganj, Delhi, admeasuring 178 Sq. Yds. (earlier known as Plot No.115/5 Block No. 67B Bagh Raoji-III, Delhi) ('suit property' or 'Gali Gopal Wali property').

3. It is stated in the plaint that the suit property belonged to Late Smt. Kanti Devi (i.e., mother of the parties), who died intestate on 23.04.2021 leaving behind five (5) children. It is stated that thus the Plaintiff Nos.1 and 2 claim 1/5th undivided share each in the suit property along with three (3) Defendants, who are brothers of the Plaintiffs. It is stated that the Plaintiffs also claims to be in the joint physical possession of the suit property.

3.1. It is stated in the captioned application that, in the paragraph '12' of the plaint, Plaintiff No.1 has briefly mentioned that about another suit for mandatory injunction and recovery of possession i.e., CS No. 1504/2021 ('said suit') pending between the parties, but she has deliberately not disclosed her pleadings (i.e., written statement) in the said suit; which negates/contradicts the averment(s) made in the present plaint.

3.2. It is stated in the captioned application that, Defendant No.3 filed a suit i.e., CS No. 1504/2021 against the Plaintiff No.1 seeking relief of mandatory injunction and for recovery of means profits qua the property bearing Flat No. 251, Upper Ground Floor, Nagin Lake Apartment, Paschim Vihar Delhi ('Paschim Vihar property'). It is stated that it is the case of Defendant No.3, in the said suit that he is the owner of the Paschim Vihar property *vide* a sale deed dated 16.03.2011, and that he had purchased the Paschim Vihar property for a sale consideration of Rs. 47,50,000/-.

3.3. It is stated in the captioned application that the Defendant No.3 had permitted the Plaintiff No.1 and her family to live in the Paschim Vihar



property on temporary basis considering her financial difficulties only because of brotherly love and affection.

3.4. It is stated in the captioned application that in the written statement filed by the Plaintiff No.1 in the said suit (before District Court), she has claimed that the Paschim Vihar property was given to her along with Plaintiff No.2 by Late Smt. Kanti Devi (i.e., mother of the parties) in lieu of her as well as Plaintiff No.2's share in the suit property (i.e., Gali Gopal Wali property), which is subject matter of the present suit.

3.5. It is stated in the captioned application that further the Defendant No.3 had filed an application in the said suit (before District Court) under Order XII Rule 6 CPC on the ground that it has been admitted by the Plaintiff No.1 that the sale deed qua the Paschim Vihar property is in the name of Defendant No.3. It is stated that however, in reply to the said application the Plaintiff No.1 reiterated that the Paschim Vihar property was given to her along with Plaintiff No.2 by Late Smt. Kanti Devi (i.e., mother of the parties) in lieu of her as well as Plaintiff No.2's share in the suit property (i.e., Gali Gopal Wali property).

3.6. It is stated that on one hand in the suit before District Court the Plaintiff No.1 is contending that she is the owner of the Paschim Vihar property along with Plaintiff No.2, which property was given to the Plaintiffs in lieu of their share in the present suit property (i.e., Gali Gopal Wali property) and on the other hand, the Plaintiff No.1 is contending before this Court that she has 1/5th share in the suit property being a legal heir of Late Smt. Kanti Devi (i.e., mother of the parties).

3.7. It is stated that the Plaintiff No.1 is taking Courts for a ride by taking inconsistent pleas before the two Courts seized of the *lis* with the malafide



intention to make wrongful gains. It is stated that the Plaintiff No.1 has committed an act of abuse of the process of the law by taking contrary/inconsistent pleas before two (2) different Courts. It is stated that because of the pleas raised in the suit before the District Court the Plaintiff No.1 is estopped by way of Doctrine of Estoppel to raise a contrary plea of having share in the suit property (i.e., Gali Gopal Wali property) before this Court.

Arguments of the Parties

4. Learned Senior Counsel for the Defendants stated at the hearing dated 22.08.2024 that if the Plaintiff No. 1 withdraws her claims qua the Paschim Vihar Property, the Defendants are ready and willing to accept the Plaintiff's claims for partition in the suit property (i.e., Gali Gopal Wali property). The relevant portion of the order dated 22.08.2024 reads as under:

“1. Learned senior counsel for the defendants has placed on record the written statement filed by plaintiff no. 1 in Civil Suit No. 1504/2021 wherein she has taken a stand qua the Kishan Ganj property i.e., property bearing Municipal No. 8642, Ward No. XVI, Gali Gopal Wali, Gaushala Marg, Kishan Ganj, Delhi, which is contrary to the stand taken in the present proceedings. The said stands are diametrically opposite and cannot stand together.

2. Learned counsel for plaintiff no. 1 seeks time to take instructions from plaintiff no.1.

3. **Learned senior counsel for the defendants states that if the plaintiff no. 1 gives up her claim in Civil Suit No. 1504/2021 qua flat no. 251, UGF, Pashchim Vihar, Delhi the defendants will also accept partition of the suit property in the present proceedings as per the averments in the plaint.”**

(Emphasis supplied)

5. Learned counsel for the Plaintiffs states that the pleadings filed before the District Court are a matter of record. He states that the application filed by Defendant No. 3 under Order XII Rule 6 CPC was dismissed by the



District Court vide order dated 16.03.2024 and the said order has attained finality. He states, on instructions, from Plaintiff Nos. 1 and 2 that Plaintiffs are unwilling to accept the stand/offer of Defendants recorded in order dated 22.08.2024 and would therefore, pursue the claims in both the proceedings. Plaintiff No. 1 was also present before this Court on 02.12.2024 and she confirmed the submissions of the learned counsel.

Analysis and Findings

6. This Court has heard the learned counsels for the parties and perused the record.

7. The underlying suit has been filed by the Plaintiffs seeking partition of the Gali Gopal Wali Property on the plea that it was the sole and exclusive immovable property of late Smt. Kanti Devi (i.e., mother of the parties). The Plaintiffs assert that parties are the natural legal heirs of late Smt. Kanti Devi (i.e., mother of the parties) and are entitled to 1/5th share each in the suit property by virtue of Hindu Succession Act, 1956.

8. The plaint at paragraph '12' refers to pendency of a Civil Suit No. 1504/2021 before District Court, Tis Hazari; however, no disclosure about the subject matter of the suit or its pleadings have been placed on record. The said paragraph '12' reads as under:

“12. That although one suit for possession & injunction being no. 1504/ 2021 between Defendant No. 3 & plaintiff no. 1 before Ms. Ruchika Tyagi CJ 02 West THC.”

9. Defendants have placed on record the written statement dated March, 2022 and reply to an application under Order XII Rule 6 CPC dated 23.02.2023, both filed by Plaintiff No. 1 in the Civil Suit No. 1504/2021 pending before the District Court. Defendants have also placed on record



copy of the order dated 16.03.2024 passed by the District Court in the application filed under Order XII Rule 6 CPC.

10. In the written statement dated March, 2022 filed before the District Court, Plaintiff No. 1 has categorically stated that the Paschim Vihar Property vests in her as well as Plaintiff No. 2, in lieu of her share as well as Plaintiff No. 2's share in the suit property (i.e., Gali Gopal Wali Property). The relevant portion of the written statement reads as under:

“Later on, the husband of the defendant rented out the, said property and the defendant shifted in her own property **i.e. the suit property, which was given by the plaintiff and his bothers to her, as per family arrangement made by the late mother of the defendant Smt. Kanti Devi during her life time, in lieu of her share in property No.8642, Ward No.16, Gali Gopal Wali, Gaushala Marg, Kishan Ganj, Delhi-110006 measuring 178 sq. yds.** as the defendant and his brothers were running their business and they were not interested to sell the same and **that's why, in lieu of the share of defendant and her sister Smt. Richa Tiwari in the aforesaid property, the defendant and.. his brothers had given the suit property to the defendant Smt. Vandana Dixit and Smt. Richa Tiwari** but with the passage of time, the intention of the plaintiff and his two other brothers became bad and now the wants to take possession of the suit property from defendant and the plaintiff did not disclose the said fact to this Hon'ble Court intentionally, deliberately and malafidely and thus, the defendant residing in the suit property being owner thereof and the plaintiff has no right, title and interest of any kind is whatsoever it is respectfully submitted that the plaintiff is on one hand submitted that he had permitted the defendant to stay at his property and on other hand he is claiming .the mesne profits. It is well settled law that one who has given the possession of the property out of love and affection, cannot Claim mesne profits.”

(Emphasis supplied)

11. To this effect, assertions have also been made in the written statement filed in Civil Suit No. 1504/2021 before the District Court at para-wise reply to paragraph '3' of the plaint therein which reads as under:



“The installment of bank loan of the suit property was given by the plaintiff to the answering defendant **in lieu of her share in property No.8642, Ward No. 16, Gali Gopal Wali, Gaushala Marg, Kishan Ganj Delhi-110006**”

(Emphasis supplied)

12. This stand of Plaintiffs that the Paschim Vihar property has been allotted to the Plaintiffs in lieu of their share in the suit property (i.e., Gali Gopal Wali Property) was also reiterated in reply to the application filed by Defendant No. 3 under Order XII Rule 6 CPC. The relevant portion of the pleading in the reply reads as under: -

“However, it is submitted that the suit property was purchased from the funds of the HUF and the entire amount was paid by the answering defendant, as their arrived a family arrangement and **as per the family arrangement, the suit property was given by the plaintiff and his two brother to the answering defendant in lieu of her share in property No. 8642** and since then the answering defendant is residing in the suit property alongwith her family members as owner thereof and the plaintiff and other brother and sister have no concern with the suit property and the plaintiff has no right of any kind whatsoever in the suit property and claim any amount of any kind whatsoever from the answering defendant. It is further submitted that whatever amount of loan was received by the plaintiff from the bank, the same was invested by the plaintiff and his brother in their respective business and had not given in purchase of the suit property.”

(Emphasis supplied)

13. The District Court relied upon the said stand of the Plaintiffs in the written statement and the reply to the application filed under Order XII Rule 6 CPC and dismissed the said application vide order dated 16.03.2024. The relevant portion of the order reads as under:

“In the present matter though the defendant has mentioned in her WS that the suit property was registered in the name of the plaintiff and the EMIs are being paid from the account of the plaintiff, however, the same was done as per the family settlement, which was mutually arrived at when their mother was alive and between the three



brothers including plaintiff and two sisters including defendant. It has been categorically mentioned by the defendant in her WS that since she is a coparcener and has a right in the share to the property of her parental house. **However, as per the family agreement the property at Gopal Wali Gali, Gaushala Marg was to be sold and the share of the defendant and her sister was to be given to them. However, since the brothers of the defendant including the plaintiff were running their business from the said address, therefore, a family arrangement was arrived at that instead of selling out of property situated at Gaushala Marg, the brothers of the defendant will pay the EMIs of the suit property, which was actually purchased by the defendant in lieu of her share in the estate of her parents.**”

(Emphasis supplied)

14. The Plaintiffs do not dispute the aforesaid unequivocal stand taken by them before the District Court in the written statement and the reply filed to Order XII Rule 6 CPC application. The Plaintiffs further state that they confirm their stand in the pleadings before the District Court and do not withdraw the stand taken therein.

15. A Co-ordinate Bench of this Court in **Sean Dushyant Manchanda v. Rabia Manchanda**¹ (authored by Prateek Jalan, J.) in similar facts where the plaintiff therein had instituted a suit, which was wholly inconsistent with a previously instituted suit, exercised its jurisdiction under Order VII Rule 11 CPC to dismiss the plaint under Order VII Rule 11(d) CPC on the ground that a plaintiff cannot be permitted to maintain pleas, which are wholly inconsistent with its claims in previous pleadings. The learned Single Judge held that the subsequent suit was an abuse of the process of Court. The relevant portion of the judgment reads as under:

12. Parties have joined issue as to whether the ground of abuse of process and estoppel, urged by the defendants in the light of the 2012

¹ 2023 SCC OnLine Del 3534.



suit instituted by SDM, furnish a valid basis for rejection of a plaint at the threshold. As several judgments have been cited by learned counsel on this issue itself, those judgments are dealt with at the outset.

13. In connection with the argument based on estoppel, learned counsel for the defendants cited the following judgments:

a. In **Bhargavi Constructions v. Kothakapu Muthyam Reddy**, the Supreme Court held that the scope of Order VII Rule 11(d) of the CPC, to reject a plaint on the ground that it is “barred by law”, is not confined to statutory prohibitions alone, but extends also to bars imposed by judicial decisions.

b. **Mumbai International Airport (P) Ltd. v. Golden Chariot Airport** holds that the doctrine of election of causes of action and the doctrine of approbate/reprobate are really species of estoppel. Learned Senior Counsel submitted that this would constitute a legal bar, albeit not statutory, to the plaintiffs' suit. In the said judgment, the Supreme Court posed the following questions:—

“43. Now the question is whether the contesting respondent on a complete volte face of its previous stand can urge its case of irrevocable licence before the Estate Officer and now before this Court? **The answer has to be firmly in the negative.**

44. **Is an action at law a game of chess? Can a litigant change and choose its stand to suit its convenience and prolong a civil litigation on such prevaricated pleas?**” The Court relied upon various English and Indian judgments for the proposition that a party having chosen a remedy, and taken the benefit of orders passed thereunder, cannot thereafter take an inconsistent plea

c. The Division Bench of this Court, in **Asha Sharma v. Sanimiya Vanijiya P. Ltd.** affirmed the judgment of a learned Single Judge, dismissing a suit under Order VII Rule 11(d) of the CPC on the ground of estoppel by pleading and acquiescence. The learned Single Judge expressed the principle in the following terms :

“18. **A litigant who approaches the court for relief should not be doing so, in derogation of a previously held and articulated position. It needs hardly be emphasized that inconsistent pleas are not permitted in the same action. Equally inconsistent pleas are not permitted in two**



different actions. This was held to be so in *Cooke v. Rickman* [[1911] 2 K.B. 1125].....

d. A coordinate Bench in *Kailash Newar v. Satish Newar* 10 relied inter alia upon the judgment in *Asha Sharma* 11 and held that contrary pleas cannot be taken in successive suits.

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17. For the purpose of the present case, the following principles laid down in these judgments are of relevance:—

A. The power under Order VII Rule 11 of the CPC can be exercised at any stage of a suit.

B. The determination of such an application requires a holistic and meaningful reading of the plaint in its entirety. The plaint and the documents annexed thereto can be looked at, but not the written statement of the defendants or any defences raised by them.

C. Order VII Rule 11(d) does not apply only in the case of statutory prohibitions, but also to causes of action that are barred on account of judicial decisions.

D. The provisions of Order VII Rule 11 of the CPC are not exhaustive and the power to stem frivolous or vexatious litigation is inherent in the Court.

E. The doctrine of estoppel is an equitable doctrine which bars a litigant from making assertions inconsistent with earlier statements upon which the other party has placed reliance. The rules of approbate/reprobate, doctrine of election of causes of action and doctrine of acquiescence are all species of the larger doctrine of estoppel.

F. A plaint can be rejected on account of estoppel by pleading and acquiescence if it is in derogation of an inconsistent plea taken in earlier proceedings.

G. To examine questions of this nature which are akin to a plea under Order II Rule 2 of the CPC, it is necessary that the pleadings in the earlier suit be placed in evidence so that the identity of the causes of action can be demonstrated.

H. The plea of acquiescence requires a party to give up rights of which he/she has full knowledge. Such a plea is not available in the face of fraud committed by the other party.

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30. What is the consequence of this analysis upon the fate of the present suit? The remedy sought by the defendants of rejection of plaint without trial is no doubt a drastic one. However, the judgments



of the Supreme Court, inter alia in *Sopan Sukhdeo Sable, K. Akbar Ali and Dahiben*, emphasise the responsibility of the Court to thwart vexatious litigants. The judgment in *Mumbai International Airport (P) Ltd.*, **makes it clear that inconsistent pleas cannot be permitted.** In *Asha Sharma*, the Division Bench has held that **such a plea — of “estoppel by pleadings” — can indeed be used to reject a plaint under Order VII Rule 11 of the CPC.** The said judgment was sought to be distinguished on the basis that the case there was one of an admission in a pleading which was inconsistent with the case pleaded in a subsequent suit. I do not see any distinction on principle between the two situations. In the present case also, one has only to look at the pleading of the plaintiff in the 2012 suit to come to the conclusion that the plaintiff has elected to claim the proceeds of sale of the suit property, a position entirely at odds with the present claim for reversal of the very same sale.

(Emphasis supplied)

16. The law settled by the Co-ordinate Bench in **Sean Dushyant Manchanda** (supra) is squarely applicable to the facts of this case. The Plaintiff No.1 has taken a categorical stand on oath before the District Court that Plaintiff Nos.1 and 2 have become entitled to absolute ownership of the entire Paschim Vihar property in lieu of their shares in the suit property (i.e., Gali Gopal Wali property) in pursuance to a family settlement which was arrived at and finalized by their mother i.e., late Smt. Kanti Devi.

17. The stand of the Plaintiffs in their pleadings before the District Court is wholly inconsistent with the claim for partition of suit property (i.e., Gali Gopal Wali property) raised in the present proceedings. Thus, an opportunity to elect was given to the Plaintiffs by this Court vide order dated 22.08.2024. In the opinion of this Court, the stand taken by Defendants as recorded in the order dated 22.08.2024 was fair, however, the Plaintiffs in response on 02.12.2024 have categorically apprised this Court that they wish to pursue their stand in District Court vis-à-vis the Paschim Vihar property.



Moreover, it was stated that this stand has been taken by the Plaintiffs consciously and on the legal advice.

18. In view of the said stand taken by the Plaintiffs before this Court on 02.12.2024, this Court having perused the pleadings in this suit and the pleadings of the District Court, is of the considered opinion that the Plaintiffs are dis-entitled from pursuing the claims for their shares in Gali Gopal Wali property. Permitting the present suit to continue this suit would be an abuse of process of Court as well as law and, therefore, the relief in the suit qua Gali Gopal Wali property is hereby rejected.

19. The Plaintiffs are at liberty to pursue their defense in the District Court vis-à-vis absolute ownership of Paschim Vihar property in lieu of the suit property i.e., Gali Gopal Wali property.

Movable Assets

20. In this plaint there is also a plea seeking distribution of the moveable estate of late Smt. Kanti Devi. In paragraph '3-B' of the plaint, it is stated that jewelry was gifted by the mother i.e., late Smt. Kanti Devi to the Plaintiffs during her lifetime. In the plaint at paragraph '4' to '6' it is vaguely averred that there are moveable assets lying in the almirah of the mother, to which the Plaintiffs have no access. No details of the moveable assets alleged to have been kept in the almirah has been pleaded.

21. No separate value of the moveable assets has been affixed at paragraph '15' of the plaint as required under Order VII Rule 2 CPC. Since no value has been assigned to the moveable assets, no Court fee has been affixed for the recovery of the alleged assets. The claim for recovery of moveable assets is thus vague and lacks material particulars. No documents evidencing the existence of moveable assets in the almirah have been placed



on record with the plaint. The Defendants have in fact denied that there exist any moveable assets.

22. The claim for moveable assets is thus dismissed for lack of cause of action and right is reserved to the Plaintiffs to institute a fresh suit qua the moveable assets with better particulars including proof of existence and after plaintiff assigns and estimate as required under Order VII Rule 2 CPC and paying the ad-valorem Court fee.

23. In view of the above, the captioned application is allowed and the plaint is rejected under Order VII Rule 11 CPC. Pending applications if any stands disposed of.

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24. In view of the order passed in I.A. 40283/2024, the suit stands rejected and is accordingly disposed of.

25. Interim order stands vacated. And, future dates, if any stand cancelled.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

APRIL 23, 2025/sk/mt