



2025:DHC:8057



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 09.09.2025+ C.R.P. 23/2024

BHUPINDER SINGH

.....Petitioner

Through: Mr. Shreyans Singhvi, Ms. Tanuja Singh and Ms. Madhu Yadav, Advocates

versus

AJIT PAL SINGH BINDRA & ANR.

.....Respondents

Through: Mr. Abhishek Singh, Advocate

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. This Court by its Order dated 25.08.2025 while deciding the grounds for challenge raised by the Petitioner, had passed the following directions:

“....

3. Learned Counsel for the Respondent No.1 submits that in the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as the “CPC”], the Petitioner had raised two grounds. Firstly, that the petition is barred for non-joinder of parties. Secondly, that the petition is barred on account of it relying on an unregistered agreement to sell.

4. So far as concerns the ground of challenge of non-joinder of parties, it is settled law that this ground cannot be taken as a ground for challenge under Order VII Rule 11 of the CPC and can only be agitated as a defence. Reliance in this behalf is placed on the judgment of the Supreme Court in *Kasturi v. Iyyamperumal & Ors.*; (2005) 67 SCC 733.

4.1 This objection has also been dealt with by this Court in *M/s Radiance Health Care v. Sanjeev Kumar Jain*; 2024:DHC:7214. This Court, while deciding a matter on whether the grounds of non-joinder of parties is maintainable in an Application under Order VII Rule 11 of the CPC, has held that it is settled law that this is not a ground for dismissal of a plaint under order VII Rule 11 of the CPC. The relevant extract of *Sanjeev Kumar Jain* case is set out below:

5. *The other ground taken by the Petitioner/Defendant is the ground of*



misjoinder of parties. However, it is settled law that this ground is not a ground for dismissal of the plaint under Order VII Rule 11 of the CPC.

5.1 The Supreme Court in **Prem Lala Nahata & Anr. vs. Chandi Prasad Sikaria** has while clarifying that the defect of misjoinder of parties and cause of action is a defect that can be waived and cannot be a ground for rejection of plaint under Order VII Rule 11 of CPC has held that such misjoinder does not render the suit barred by law. The scheme of the Code itself, through Order I Rules 3-A, 4, 5, 9 and 10 and Order II Rules 3 and 6, indicates that neither misjoinder of parties nor misjoinder of causes of action defeats a suit. At best, it is a curable procedural defect which the Court may regulate by directing amendment, election, or separate trials. Consequently, a plaint suffering from misjoinder cannot be rejected at the threshold under Order VII Rule 11(d), since it cannot be said that such a suit is 'barred by any law'. The relevant extract from the **Prem Lala Nahata** case is set out as below:

"12. Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of causes of action either in terms of Order 1 Rule 1 and Order 1 Rule 3 on the one hand, or Order 2 Rule 3 on the other, the Code itself indicates that the perceived defect does not make the suit one barred by law or liable to rejection. This is clear from Rules 3-A, 4 and 5 of Order 1 of the Code, and this is emphasised by Rule 9 of Order 1 of the Code which provides that no suit shall be defeated by reason of non-joinder or misjoinder of parties and the court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order 1 which enables the court in appropriate circumstances to substitute or add any person as a plaintiff in a suit. Order 2 deals with the framing of a suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interested against the same defendant may unite such causes of action in the same suit. Rule 6 enables the court to order separate trials even in a case of misjoinder of causes of action in a plaint filed.

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16. Order 7 Rule 11(d) speaks of the suit being "barred by any law". According to Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, "bar" is that which obstructs entry or egress; to exclude from consideration. **It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action.**



On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that “no suit shall be instituted”. This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant. Not only are there no words of such import in Order 1 or Order 2 but on the other hand, Rule 9 of Order 1, Rules 1 and 3 of Order 1, and Rules 3 and 6 of Order 2 clearly suggest that it is open to the court to proceed with the suit notwithstanding the defect of misjoinder of parties or misjoinder of causes of action and if the suit results in a decision, the same could not be set aside in appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied. **Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order 7 Rule 11(d) of the Code.**

17. Thus, when one considers Order 7 Rule 11 of the Code with particular reference to clause (d), it is difficult to say that a suit which is bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits.”

[Emphasis Supplied]

4.2 Thus, to the extent of this challenge, the challenge is not maintainable.

4.3 In any event, learned Counsel for Respondent No.1 submits that so far concerns the persons who were not previously impleaded, they have themselves filed an application for impleadment before the learned Tribunal Court, which is pending adjudication, thus, the ground does not survive.

5. So far as concerns the second challenge on an unregistered sale deed, learned Counsel for Respondent No.1 seeks to rely upon the



2025:DHC:8057



proviso to Section 115 of the CPC to submit that this challenge is also not maintainable.

6. In the interest of justice, list on 09.09.2025.”

2. Learned Counsel appearing on behalf of the Petitioner today submits that his challenge in the present Petition is under Order VII Rule 11(d), more specifically, under Section 14(1)(b) of the Specific Relief Act, 1963. Learned Counsel, however, fairly concedes that this ground has not been taken by him in the Application which was the subject matter of adjudication before the learned Trial Court. He seeks permission to withdraw the present Petition with liberty to file an appropriate Application before the learned Trial Court.

3. Learned Counsel appearing on behalf of the Respondents submits that these Applications are being filed merely to delay the proceedings. He further submits that the evidence of the Respondent/Plaintiff has already been concluded.

4. In view of what is stated by the Petitioner above, the Petition is dismissed as withdrawn. Pending Applications, if any, stand closed.

5. The learned Trial Court is at liberty to examine any Application filed in accordance with law. All rights and contentions of both parties are left open to be agitated before the learned Trial Court.

6. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 9, 2025/g.joshi