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

% **Date of Decision: 16th February, 2026**

+ CS(COMM) 793/2023 & I.A. 14360/2017

M/S METRO BUILDTECH PRIVATE LIMITEDPlaintiff

Through: Mr. Ashim Shridhar and Ms. Maheen
Khan, Advs.
M: 8447564542
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chamberashimshridhar@gmail.com

versus

MR. SHRIDHAR Y. CHITALE & ANR.Defendants

Through: Ms. Smiti Verma, Adv. for D-1
M: 8828446871
Email: smitiverma@cvassociates.in
Mr. Sanjiv Kakra, Sr. Adv. with Mr.
Akash Madan, Adv. for D-2
M: 7869611011
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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. (ORAL)

1. The present suit is at the stage of framing of issues.
2. Learned counsel appearing for the plaintiff submits that defendant no. 2 is supporting the case of the plaintiff.
3. The present case has been filed by the plaintiff seeking specific performance of the Collaboration Agreement dated 14th July, 2015, whereby, the defendants' mother, i.e., Late Mrs. Sushama Yeshwant Chitale and the plaintiff company agreed to develop the property bearing B-111, Neeti Bagh, New Delhi-110049, and construct a new building thereon.



4. Learned counsel appearing for the plaintiff has handed over certain proposed issues, which are the common issues proposed by the plaintiff and defendant no. 2.

5. Learned counsel appearing for defendant no. 1 has no objection to the said common issues proposed by the plaintiff and defendant no. 2. However, she draws the attention of this Court to the averments made in the written statement of defendant no.1 dated 19th February, 2024, wherein, it is stated as follows:

“xxx xxx xxx

21. Even otherwise and without prejudice to the aforesaid, it is stated that the Will dated 27-4-1989 of the late mother was superseded by the oral partition way back in the year 1994 affected between the Defendants due to the continuous conflict between the families as regards the property and money at the instance of the Defendant No. 2 and his wife. If at all, the mother of the Defendants has acted in accordance with her desire during her lifetime by dividing the Suit Property in the year 1994 in the manner held by both the Defendants till date. Both the legal heirs have fully accepted their respective shares in the Neeti Bagh Property pursuant to the partition/division of 1994 and have coexisted peacefully and enjoyed the same for over 29 years without any

reservation, protest or dispute. In fact, Defendant No. 2 has in the recent past, made substantial internal and external modifications/changes to the share held by him in the Suit Property signifying his acceptance of the respective share allotted to him by their mother in 1994 by way of the stated oral partition/division.



xxx xxx xxx

25. Noticing the potential danger which may be caused to the family on account of the demands made by Defendant No. 2 and his wife, along with the fact that Dr. Chitale was bed ridden in 1993, the mother of the Defendants decided to divide/partition the Suit Property amongst her two sons (the Defendants). In terms of the said division, Defendant No. 2 and his family's share in the Suit Property was the entire ground floor along with front half portion of the basement and 2nd floor of the staff quarters while the share of the Defendant No.1 and his family was the first floor, second floor and rear portion of the basement in the Suit Property along with the 1st floor staff quarter. Few years later, the late mother sold a commercial property namely, flat no. 312, Ocean Plaza, Sector 18, NODIA, UP an office space, in the complex "OCEAN PLAZA" located at NOIDA film city (which was in the name of Defendant No.1) for which she received a total amount of Rs.6,50,000/- from the sale thereof and gifted the entire amount of Rs. 6,50,000/- (Rupees Six lakh fifty thousand only) therefrom, to Defendant No. 2 through a cheque bearing no. 5012081 dated 17-11-2003 drawn in favour of Defendant No. 2 for Rs.6,50,000/-(Rupees six lakhs and fifty thousand only). The aforesaid fact also becomes writ large from the entry made by the late mother in her own handwriting in the Standard Chartered Bank cheque book (for the period September, 2003 to February, 2004) showing the gift amount made by her to the Defendant No. 2



and the Gift Deed dated 13-11-2003 executed by the mother of the Defendants in favour of Defendant No. 2 whereby she has gifted the aforesaid amount to Defendant No. 2. Significantly, the said Gift Deed is witnessed by the wife of Defendant No. 2 and the clerk of Defendant No.2 – Shri Chaman Lal who is still in his employment. This further signifies the continuing intention of the late mother over a period of several years in dividing the Neeti Bagh Property in the manner aforesaid and compensating the Defendant No. 2 in a reasonable manner. The Defendant No. 1 also relies upon the income tax returns of his mother for the Assessment year 2004-2005 disclosing the sale of the stated Ocean Plaza property.

26. In or around the year 1994, the mother of the Defendants' made an oral division/partition of the Neeti Bagh Property whereby, the Defendant No.1 and his family were asked to permanently shift to and reside in the 1st & 2nd Floors of the Neeti Bagh Property while the Defendant No. 2 and his family were asked to reside in the ground floor of the Neeti Bagh Property. This division was logically made by the mother of the Defendants as by then Defendant No. 2 already had a son and a daughter while the Defendant No.1 had one son and the mother of the Defendants wished to reside only with Defendant No.1, which she did till she moved to Pune permanently where she lived till her untimely death owing to the extreme trauma caused by Defendant No. 1 and the Plaintiff who misrepresented facts and coerced her into signing the alleged Collaboration Agreement. Even during her visits to Delhi, the mother of the Defendants chose to



reside only with Defendant No. 1. Accordingly, the permanent division was made and in lieu of the two floors (i.e., the first and second floor of the Neeti Bagh Property) given to the Defendant No. 1 and his family, the Defendant No. 2, apart from the money given to Defendant No. 2 from the sale of the Ocean plaza office complex, Defendant No. 2 was further compensated with money from the sale of the NOIDA land which stood in the name of the Defendant No.1 and which was sold for that purpose. Although the mother of the Defendants did not want to give any money to the Defendant No. 2, the constant harassment by the Defendant No. 2 and his wife Suchitra Atul Chitale forced her to part with the money. The harassment was so severe that they did not let even two days pass by after the money from the sale of the NOIDA land was deposited in the bank account of the Defendant No. 1 and the Defendant No.2 and his wife continuously harassed their mother to transfer it to the Defendant No. 2's account. In this manner, the Suit Property was divided between the brothers and the Defendant No. 2 was duly compensated. Both the Defendants with their respective families since then have been in uninterrupted and peaceful possession of their respective portion. In fact, Defendant No. 2 has never raised any objection to Defendant No. 1's possession over a larger share knowing fully well that the same was fair, proper and that Defendant No. 2 was adequately compensated.

xxx xxx xxx''

6. By referring to the aforesaid, learned counsel appearing for defendant no. 1 submits that the defendant no. 1 has clearly stated in the written statement that there was an oral partition of the suit property in the year 1994. She, thus, submits that at the time when the Collaboration Agreement



dated 14th July, 2015 was entered into between the mother of the defendants and the plaintiff, the mother of the defendants had no right, title and interest in the suit property, as the oral partition had already taken place.

7. However, the aforesaid submission is vehemently disputed by learned Senior Counsel appearing for defendant no. 2 as well as learned counsel appearing for the plaintiff.

8. Attention of this Court has been drawn to Order VIII Rule 6A of the Code of Civil Procedure, 1908 (“CPC”) to submit that defendant no. 1 cannot raise any claim *qua* the defendant no. 2.

9. Attention of this Court has also been drawn to documents with respect to the perpetual Sub-Lease Deed dated 21st July, 1973, in favour of the grandfather of the defendants, and the registered Gift Deed dated 19th September, 1983, in favour of the mother of the defendants.

10. Having heard learned counsels appearing for the parties, at the outset, this Court notes the provision of Order VIII Rule 6A of the CPC, which reads as under:

“xxx xxx xxx

6A. Counter-claim by defendant.

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to



the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

xxx xxx xxx”

11. Reading of Order VIII Rule 6A of the CPC clearly shows that a defendant has the right to raise a counter claim against the claim of the plaintiff. However, the CPC nowhere provides that a defendant can raise a counter claim against a co-defendant.

12. At this stage, it would be apposite to refer to the case of ***Rajul Manoj Shah Alias Rajeshwari Rsiklal Shah Versus Kiranbhai Shakrabhai Patel and Another, 2025 SCC OnLine SC 1958***, wherein, the Supreme Court held that a defendant cannot file a counter claim against a co-defendant, in the following manner:

“xxx xxx xxx

20. Rule 6A provides that counter-claim shall be against the claim of the plaintiff and such right or claim shall be in respect of cause of action accruing to defendant against the plaintiff. This Court in *Rohit Singh (supra)* held;

*“21. Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. **But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained.** By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit.....”*

*21. The above observations have been reiterated with approval in subsequent pronouncement in *Damodhar Narayan Sawale v. Tejrao Bajirao Mhaske*⁸, by observing as under;*

*“39. The decision of this Court in *Rohit Singh v. State of Bihar* also assumes relevance in the above context. **This Court held that a defendant could not be permitted to raise counterclaim against co-defendant because by virtue of***



Order 8 Rule 6-A CPC, it could be raised by the defendant against the claim of the plaintiff.”

22. In the present case, defendant no. 2 sought to raise a counter-claim primarily for the relief of specific performance of agreement dated 21.10.2011 executed in his favour by deceased original defendant no. 1 with respect to her undivided share in the suit property, by a direction to the Nazir, the substituted representative of defendant no. 1, to execute a sale deed in pursuance of the agreement to sell. **The relief of specific performance as sought to be raised by defendant no. 2 cannot be set up by way of a counter-claim since the same is not directed against the appellant/plaintiff, but is instead directed solely against the co-defendant. In view of this, defendant no. 2 is held to be disentitled to raise prayer of specific performance by way of counter-claim.** This is simply not permissible, and this position is no more res-integra in view of the decision of this Court in Rohit Singh (*supra*).

xxx xxx xxx”

(Emphasis Supplied)

13. Thus, as per Order VIII Rule 6A of the CPC, no issue can be framed by this Court allowing the defendant no. 1 to raise a counter claim against the defendant no. 2. In case such a course of action is allowed, the same will have the effect of converting the present suit for specific performance to a title dispute between the defendants. This would be impermissible, as the nature of the suit cannot be changed from that of suit for specific performance filed by the plaintiff to a suit regarding title dispute between the defendants.

14. Further, this Court takes note of the perpetual Sub-Lease Deed dated 21st July, 1973, executed by the Land and Building Department of the erstwhile Delhi Administration in favour of the grandfather of the defendants.

15. This Court also takes note of the registered Gift Deed dated 19th September, 1983, executed by the grandmother of the defendants in favour of the mother of the defendants. Thus, it is clear that *prima facie*, the mother



of the defendants, on the basis of the documents on record, was the exclusive owner of the suit property.

16. Therefore, in case, the defendant no. 1 intends to raise any issue with regard to the title and ownership of their mother over the suit property, the same would be the subject matter of another suit.

17. In this regard, reliance is placed on the case of ***Kasturi Versus Iyyamperumal and Others, (2005) 6 SCC 733***, wherein, the Supreme Court held that a Court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract into a suit for title, in the following manner:

“xxx xxx xxx

*16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. **In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into.** As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.*

xxx xxx xxx”

(Emphasis Supplied)

18. Thus, no issue can be framed by this Court with regard to the claim



set up by defendant no. 1 against defendant no. 2 as regards the oral partition, or their mother not having any right, title or interest over the suit property at the time when the Collaboration Agreement dated 14th July, 2015, was executed.

19. It is clarified that the aforesaid observation is only with respect to the adjudication of the issue before this Court, regarding the framing of issues as proposed by defendant no. 1.

20. In case, defendant no. 1 intends to file a fresh suit in that regard, pressing for oral partition of the suit property as averred in the written statement, the defendant no. 1 is free to his pursue remedies, in accordance with law.

21. Needless to state, in case such a suit is filed by defendant no. 1, the other parties, including, defendant no. 2 or plaintiff, will have the right to raise any objections with regard thereto.

22. Accordingly, the following issues are framed:

I. Whether the plaintiff and the defendants' mother namely Late Mrs. Sushama Yeshwant Chitale entered into a Collaboration Agreement dated 14th July, 2015 *qua* the suit property, i.e., *B-111, Neeti Bagh, New Delhi-110049*? (**OPP**)

II. Whether the plaintiff is entitled to specific performance of the Collaboration Agreement dated 14th July, 2015? (**OPP**)

III. Whether the plaintiff is entitled to decree of mandatory injunction for conversion of the suit property from leasehold to freehold by the defendants? (**OPP**)

IV. Whether the plaintiff is entitled to decree of permanent injunction restraining the defendants from creating third-party interests? (**OPP**)



V. Whether the defendants' mother entered into an Agreement to Sell with respect to the ground floor of the suit property along with 22.5% undivided share in the suit property by way of Collaboration Agreement dated 14th July, 2015? (*OPP*)

VI. Whether the plaintiff is entitled to damages of Rs. 2,00,00,000/- along with interest, and if so, from which of the defendants? (*OPP*)

VII. Whether the suit for specific performance of the Collaboration Agreement dated 14th July, 2015 is maintainable? (*OPD1*)

VIII. Whether the Collaboration Agreement dated 14th July, 2015 does not entitle the plaintiff to any right, title or interest in the suit property being a non-registered document as per sections 17 and 49 of The Registration Act, 1908? (*OPD1*)

IX. Whether the Collaboration Agreement dated 14th July, 2015 is non-enforceable for being executed without the prior written permission of the lessor under the perpetual Sub-Lease Deed dated 21st July, 1973 and restrictions contained in the Gift Deed dated 19th September, 1983? (*OPD1*)

X. Whether the suit has not been properly valued for the purposes of Court Fees and jurisdiction, and is therefore liable to be dismissed? (*OPD1*)

XI. Relief, if any.

23. All the parties are directed to file list of witnesses, within a period of four weeks, from today.

24. The plaintiff shall file Evidence Affidavit of its witnesses, within a period of ten weeks, from today.

25. Since the matter is now at the stage of evidence, the interim order dated 05th December, 2017 is made absolute during the pendency of the present suit.



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26. Accordingly, *I.A. 14360/2017* is disposed of.
27. List before the Joint Registrar (Judicial) for further proceedings on 04th May, 2026.

MINI PUSHKARNA, J

FEBRUARY 16, 2026/KR