



2025:DHC:91



\$~16

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

%

Judgment Delivered on 10.01.2025+ **CS(OS) 638/2021 & I.A. 15803/2021**

RTD. BRIG. S.C. KUTHIALA

.....Plaintiff

Through: Mr. Ishan Jain and Mr. Yash Prakash,
Advs.

versus

SH. RAJAN KUTHIALA & ORS.

.....Defendants

Through: Mr. Jai Sahai Endlaw, Adv. for D-1,
2, 4, 5 & 6Mr. Bhuvanesh Sehgal and Mr.
Shubham Arora, Advs. for D-3Mr. Roopansh Purohit and Mr. Harsh
Panwar, Advs. for D-10 & D-11**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.****I.A. 4189/2022 (under Order VII Rule 11 read with Section 151 by defendant nos. 1, 2, 4, 5 and 6)**

1. By way of present application the above noted defendants / applicants have prayed for the rejection of plaint.

2. The plaintiff has filed the present suit with the following prayer:-

"1. Declare the alleged sale deed dated 12.11.2012 beyond capacity of the vendors, therefore be declared null and void ab-initio, and not be used further by any of the defendant for any purpose whatever it may be, as title deed of the property, 40



Babar Road, Bengali Market, New Delhi;

2. Cancel the alleged sale deed registered as document No. 23349 entered in additional Book No.-1, Volume-4592, at pages 31 to 41 on dated 12.11.2012 before Sub Registrar VII, New Delhi, fraudulently executed by defendant no 1 for and on behalf of defendant no. 2 to 9 in favour of the defendant No.11 – 12, in respect of the Suit property bearing No. 40 Babar Road, Bengali market, New Delhi, and restore the property in its original position prior to the said sale deed;

3. To declare defendant no. 1 & 2 have no right title interest or authority against any part of the property at plot no. 40 Babar Road, New Delhi;

4. To declare that the Plaintiff is 100% owner of the property bearing No. 40 Babar Road, Bengali market, New Delhi being legal of Late Mansa Ram, in whose favour the Lahore property was registered and falls as share from HUF, and in the alternate if the Court found and decide otherwise, declare the Plaintiff as Joint owner to the extent of holding 2/7th Share in the property (as was already Admitted by the Defendants no.1 to 9 in other proceedings). And in case this Hon'ble Court come to the conclusion that the Plaintiff is entitled to recover 2/7th Share in the property from the defendants, the appropriate decree be passed in favour of the Plaintiff and against the defendant to that extent to recover the his share in the sale proceeds of the property together with the interest @24% per annum from the date of sale till the whole of the amount be realised in full.

5. To issue a mandatory and permanent injunction in favour of the Plaintiff and against the defendants, restraining the defendants for not to sell / alienate / transfer / or create third party right / interest in the property i.e. No. 40 Babar Road, Bengali market, New Delhi in any manner whatsoever it may be.

6. To allow the suit in favour of the plaintiffs against the defendants along with cost of the suit.”



3. The prayer in the suit is essentially for declaration and cancellation of Sale Deed dated 12.11.2012 of the property bearing no.40, Babar Road, Bengali Market, New Delhi (hereinafter referred to as 'the suit property').

4. The suit filed by the plaintiff is premised on the allegation that the plaintiff is 100% owner of the suit property being legal heir of Late Mansa Ram Kuthiala and in the alternative it is alleged that the plaintiff is co-owner in the suit property to the extent of 2/7th share whereas the defendant no.1 in active connivance with the defendant nos.2 to 9, who are all close relatives and legal heirs of the same ancestor i.e. Late Mangat Ram Kuthiala, have illegally sold the suit property to the defendant nos.10 & 11 *vide* registered Sale Deed dated 12.11.2012.

5. Mr. Jai Sahai Endlaw, learned counsel for the applicants submits that the suit is barred by law under Order VII Rule 11(d) of CPC read with Section 34 of the Specific Relief Act, 1963.

6. Elaborating on his submission, he submits that the present suit is primarily for the relief of declaration and cancellation of Sale Deed dated 12.11.2012 without asking for a further relief of possession. He submits that it is evident from the averments made in the plaint that the suit property has been sold and transferred and it is the purchaser who is in actual physical possession of the suit property. Inviting attention of the Court to the Sale Deed dated 12.11.2012, he contends that the fact that actual physical possession has been handed over to the purchasers is clearly borne out from the narration in the said Sale Deed.

7. He submits that proviso to Section 34 of the Specific Relief Act, 1963 states that no court shall make any declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. He



2025:DHC:91



contends that in a suit seeking declaratory relief, if further relief of recovery of possession ought to have been claimed by the plaintiff, the suit will not be maintainable in the absence of such relief and will be liable to be rejected at the threshold. He places reliance on the decision of the Hon'ble Supreme Court in *Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar vs. Chandran & Ors.: (2017) 3 SCC 702*.

8. Next, it is contended by Mr. Endlaw that the suit is barred by limitation. Expanding on his arguments, learned counsel submits that it is the plaintiff's own case that in the year 2006, the defendants were trying to sell the suit property and the plaintiff was constrained to issue a public notice. Subsequently, the plaintiff had even filed a suit being CS(OS) 1899/2006 before this Court seeking to prevent the defendants from alienating the suit property. Thus, it was within the knowledge of the plaintiff in the year 2006 itself that the defendants are endeavouring to sell the suit property. He further submits that the defendants have placed on record a copy of suit bearing CS No.8215/2013 (earlier numbered as CS No.172/2010) before the court of Civil Judge, Hoshiarpur filed by Mr. Radha Krishan Kuthiala seeking declaration with regard to various properties, one of which was the suit property. In the said suit, the plaintiff was one of the defendants against whom a relief of declaration was prayed for. *Vide* order dated 18.12.2013 in the said suit, the fact with regard to the sale of the suit property was noted by the court at Hoshiarpur. Further, inviting attention of the Court to the certified copy of the Sale Deed dated 12.11.2012, he submits that the same bears the stamp of the Registrar which indicates that the certified copy of the Sale Deed was procured by the plaintiff on 01.08.2013. He thus, contends that the Sale Deed dated



2025:DHC:91



12.11.2012 was within the knowledge of the plaintiff as early as in the year 2013 but the present suit came to be filed only in the year 2021, therefore, the suit is barred by Article 59 of the Limitation Act, 1963.

9. He further invites the attention of the court to the index of the documents filed by the plaintiff to contend that the line of custody mentioned in the said index with regard to the Sale Deed in question is with defendant no. 1 whereas now, in the reply to the present application, the stand taken by the plaintiff / non-applicant is that certified copy of the sale deed was handed over to the plaintiff by Mr. Radha Krishan Kuthiala. Attention has also been drawn to the plaint to contend that in the pleading itself there is reference to another case that alludes to the suit filed at Hoshiarpur in the year 2013. In this backdrop, it is stated that the plaintiff/non-applicant cannot feign ignorance with regard to the Sale Deed.

10. He further submits that though, the order dated 18.12.2013 in CS No.8215/2013 has been placed on record by the applicants/defendants with their written statement, but the same could be considered by this Court while dealing with the present application under Order VII Rule 11 CPC since the law is well settled that documents filed, and the documents which ought to have been filed, with the plaint, but have been deliberately withheld by the plaintiff, could be seen by the court. To buttress his contention, he places reliance on the decision in ***Babita Pal & Ors. vs. Jagdish Bansal: (2012) SCC OnLine Del 6043.***

11. It is further contended by Mr. Sahai that the plaintiff has suppressed the material fact that he had earlier filed a suit being CS(OS) 1899/2006 with regard to the suit property. However, the said suit was unconditionally withdrawn by the plaintiff by moving an application under Order XXIII



Rule 1 of the Code. He submits that this Court *vide* order dated 21.12.2009 had allowed the aforesaid application and the suit was dismissed as withdrawn. He, therefore, contends that the present suit is barred by Section 11 read with Order II Rule 2 of the Code as the issue at hand in the present suit was directly and substantially in contention in CS(OS) 1899/2006 as well, which the plaintiff had withdrawn unconditionally.

12. Lastly, it has been contended by Mr. Sahai that the relief in the suit has not been properly valued. He submits that the plaintiff in the plaint has valued the suit property at Rs.2,00,01,000/- on which he has paid *ad valorem* court fees. He submits that the plaintiff is seeking cancellation of impugned Sale Deed dated 12.11.2012 to which he is neither a party nor is he in possession of the property which is the subject matter of the said Sale Deed. The Sale Deed having been executed for a sale consideration of Rs.3,90,00,000/-, the plaintiff is legally bound to value the suit accordingly and pay the fees on the sale consideration amount. In support of his contention, he has placed reliance on the decision of the Hon'ble Supreme Court in ***Suhridd Singh vs. Randhir Singh & Ors.*** (2010) 12 SCC 112.

13. *Per contra*, Mr. Ishan Jain, the learned counsel for the plaintiff/non-applicant submits that the prohibition contained in proviso to Section 34 of the Specific Relief Act would not operate in the present case inasmuch as apart from seeking declaration and cancellation of the Sale Deed, consequential relief in the form of injunction has been sought. To buttress his contention, he places reliance on the decision of the Hon'ble Supreme Court in ***Akkamma & Ors. vs. Vemavathi & Ors.*** (2021) 18 SCC 371.

14. He further submits that the plaintiff has categorically stated that he came to know about the Sale Deed dated 12.11.2012 only in the month of



November/December, 2019 and there is nothing on record to suggest that the certified copy of the Sale Deed dated 12.11.2012, which has been placed on record, was applied for by the plaintiff. In the plaint filed by the plaintiff, it has been categorically stated that he came to know about the fraudulent Sale Deed in November-December, 2019. He submits that the plaintiff has filed a copy of the Sale Deed only after obtaining the same from Mr. Radha Krishan Kuthiala towards the end of the year 2019. He thus, contends that question of limitation is a triable issue and cannot be decided in an application under Order VII Rule 11 of the Code.

15. He further submits that the order dated 18.12.2013 as placed on record along with the written statement by the defendant cannot be looked into for deciding an application under Order VII Rule 11 CPC. Further, the said order nowhere mentions about the Sale Deed dated 12.11.2012.

16. Next, it has been contended by learned counsel for the plaintiff that the suit is not barred by Order VII Rule 11(d) read with Order II Rule 2 and Section 11 of the Code as the same is a triable issue. He submits that the plaintiff is not guilty of suppressing any material fact as the plaintiff has filed the order dated 21.12.2009 passed in earlier suit CS(OS) 1899/2006. He submits whether reliefs claimed in the present suit were directly and substantially the issues in the earlier suit is a matter of trial and the provisions of Order VII Rule 11(d) CPC cannot be invoked for the said purpose. He submits that when no trial/adjudication took place in the earlier suit then there is no question of Section 11 of CPC coming into operation. He places reliance on the decision of the Hon'ble Supreme Court in ***Srihari Hanumandas Totala vs Hemant Vithal Kamat & Ors. (2021) 9 SCC 99.***

17. As regards the valuation of the relief, as well as, the court fee to be



affixed thereon, the contention of the learned counsel is that the plaintiff is not party to the impugned Sale Deed dated 12.11.2012 and is thus required under the law to seek mere declaration of the Sale Deed being void and not binding on the plaintiff. He submits that *ad valorem* court fee is to be paid by a person being party to the document seeking relief of cancellation as a principal relief, which is not the situation in the present case. Therefore, the plaintiff is liable to pay only the fixed court fee. He has also placed reliance on the decision of the Hon'ble Supreme Court in ***Suhrid Singh*** (supra).

18. I have heard the learned counsel for the applicant, as well as, learned counsel for the plaintiff/non-applicant and have perused the material on record.

19. One of the submissions made by the learned counsel for the applicant is that the suit is barred by limitation. It is imperative to note that Article 59 prescribes the period of limitation as three years for a suit seeking cancellation or setting aside of an instrument and such period begins to run from the time when the facts, entitling the plaintiff to seek declaration against the instrument or get the same cancelled, first becomes known to him.

20. The Sale Deed which is subject matter of challenge in the present suit is dated 12.11.2012, however, the present suit has been filed in November, 2021. The stamp of the office of Registrar on certified copy of the Sale Deed, which has been filed along with the plaint, shows that the certified/true copy of the same was obtained on 01.08.2013. The contention of the learned counsel for the plaintiff, as pleaded in the reply to the present application, is that the said copy was applied and received by Mr. Radha Krishan Kuthiala and the same was provided to the plaintiff only towards



the end of the year 2019. Even the case set up by the plaintiff in the plaint is that he was never aware about the Sale Deed and acquired knowledge about the same while contesting another suit for his share in another property in November-December, 2019 and received the necessary documents only in January, 2020. The relevant paragraphs of the plaint read as under:-

“25. That the Plaintiff never been informed about the sale of the property subject matter of the present suit, till he came to know the same while contesting another case for his share for another property which was also sold by the Defendants no.1 to 9 in active connivance with each other without knowledge and intimation of the Plaintiff.

26. That after being having doubts about the sale of the property the Plaintiff inspected the revenue records pertaining to property subject matter of the present suit, from the office of sub-registrar. Then only, the plaintiff came to know about the multiple fraudulent sale of the property at 40, Babar Road in the Nov.-Dec. 2019.

XXXX XXXX XXXX XXXX

31. That the Plaintiff acquired knowledge about the sale of the property subject matter of the present suit in Nov-Dec.2019, in proceedings of another case only, and immediately started searching the proof of the illegal sale, and he only received the necessary documents in January 2020. Hence the cause of action start reckoning from the date of knowledge of the illegal sale by the defendants in the month of Nov-Dec. 2019, and due to lockdown in the month of March 2020 till March 2021, the plaintiff was not able to approach this Hon'ble Court. Hence the suit is within limitation.”

21. Thus, from the reading of the plaint, the knowledge of the Sale Deed dated 12.11.2012 cannot be ascribed to the plaintiff in the year 2013. However, to appreciate the contention of the defendants/applicants that in the order dated 18.12.2013 passed by the learned Civil Judge, Hoshiarpur in



2025:DHC:91



CS No.8215/2013, the said Court has noted the fact of sale of suit property, therefore, the Sale Deed dated 12.11.2012 was within the knowledge of plaintiff, it is apt to refer to the relevant part of the said order, which reads thus:

“The Ld. Counsel for the defendant argued that since relief of permanent injunction has not sought against them (defendants No. 5 to 13) by the plaintiff, and the properties mentioned at Sr. No. ii & iii in the head note stood already disposed of as such they cannot be restrained from alienating their share. In the end prayer for dismissal of the application was made.”

22. A mere reading of the above quoted part of the order dated 18.12.2013 shows that the Court has only noted a submission made by the learned counsel for defendant nos. 5 to 13 in the said suit, to the effect that the properties mentioned at Sl. No. ii & iii in the head-note of the plaint stood already disposed of. The defendants/applicants have placed on record a memo of parties/head-note of some suit but there is nothing on record to suggest that the said memo of parties/head-note filed with the written statement as Document no.6 is of the same suit in which the order dated 18.12.2013 (Document no.8) was passed. Further, there is no admission on part of the plaintiff that Document no.6 and Document no.8 relate to the same suit and that the defendant no. 4 in that suit is, in fact, the plaintiff herein. Thus, the above question is a matter of trial and this Court is not inclined to consider the aforesaid documents filed by the defendants/applicants while dealing with the present application under Order VII Rule 11 CPC by drawing an inference that the plaintiff gained knowledge of the impugned Sale Deed in the year 2013. Likewise, there is no material on record to conclusively suggest that the certified copy of the



2025:DHC:91



Sale Deed bearing the date of certification as 01.08.2013, was obtained by the plaintiff. Rather, the stand of plaintiff in the plaint is that necessary documents pertaining to sale of suit property were received by him in January, 2020. In this backdrop, limitation being a disputed question of fact is a triable issue and cannot be decided in the present application.

23. As regard the contention of the applicants/defendants that the suit is barred by Section 11 read with Order II Rule 2 of CPC as the issue at hand in the present suit was directly and substantially raised in CS(OS) 1899/2006 which the plaintiff had withdrawn unconditionally on 21.12.2009, suffice it to say that the earlier suit was withdrawn on 21.12.2009; whereas the Sale Deed which has furnished a cause of action to the plaintiff to file the present suit is of the year 2012, therefore, it cannot be said that the issue in the earlier suit and in the present suit are substantially the same. In the present suit, as noted above, the main prayer is for cancellation of the Sale Deed dated 12.11.2012 and to declare it as null and void *ab-initio*. Needless to say that the said relief could not have been sought in the year 2006 when earlier suit was filed by the plaintiff.

24. Even otherwise, the law is well-settled that the plea of *res judicata* can be decided after taking into consideration the pleadings, issues and decisions in the previous suit and such a plea will be beyond the scope of Order VII Rule 11(d) CPC, where only the statements in the plaint will have to be perused. A reference in this regard may be had to the decision of the Hon'ble Supreme Court in *Srihari Hanumandas Totala (supra)*.

25. To appreciate the rival contentions of the parties on the next question, i.e. whether the suit for mere declaration without any further consequential reliefs, when the plaintiff is not in possession of the suit property, is not



maintainable and the plaint is liable to be rejected under Order VII Rule 11(d) read with Section 34 of the Specific Relief Act, 1963, relevant would it be to reproduce Section 34 of the Specific Relief Act, 1963, which reads as under:

“Section 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.”

26. The prayer in the suit is only for declaration and cancellation of Sale Deed dated 12.11.2012 along with other declaratory reliefs and the relief of mandatory and permanent injunction. Clearly, no relief of possession has been sought.

27. A perusal of the order dated 15.01.2024 passed by this Court shows that on a query posed by the court as to why the plaintiff has not sought the relief of possession, the learned counsel for the plaintiff had stated that relief of possession has not been sought because the plaintiff, being a co-partitioner, is in constructive possession of the suit property.

28. Incidentally, it is the case of the plaintiff that the defendant no.1, in active connivance with the defendant nos. 2 to 9, whom the plaintiff claims to be the co-owners, had sold the suit property to the third party i.e. the defendant nos.10 & 11, *vide* registered Sale Deed dated 12.11.2012. It is the said sale deed with regard to which decree of declaration has been sought in



the present suit. A perusal of the said Sale Deed shows that the vendors handed over the vacant physical possession of the suit property to the vendees and now they are in possession of the same. It is thus, evident that the possession of the suit property is with the vendees i.e. the defendant nos. 10 & 11 and the plaintiff is not in possession of the suit property. The defendant nos. 10 & 11 being third parties, the plaintiff cannot claim to be a co-owner/co-partitioner or in constructive possession of the suit property.

29. The law is well settled that the suit filed seeking mere declaration without relief of recovery of possession is not maintainable and liable to be dismissed. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in *Executive Officer, Arulmigu Chokkanatha (supra)* wherein dealing with identical situation, the Hon'ble Supreme Court observed as under:

“35. The plaintiff, who was not in possession, had in the suit claimed only declaratory relief along with mandatory injunction. The plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere declaration without relief of recovery of possession was clearly not maintainable and the trial court has rightly dismissed the suit. The High Court neither adverted to the above finding of the trial court nor has set aside the above reasoning given by the trial court for holding the suit as not maintainable. The High Court in exercise of its jurisdiction under Section 100 CPC could not have reversed the decree of the courts below without holding that the above reasoning given by the courts below was legally unsustainable. We, thus, are of the view that the High Court committed error in decreeing the suit.”

(emphasis supplied)

30. Insofar as submission of the learned counsel for the plaintiff that in prayer clause (5) “further relief” in the form of mandatory and permanent



2025:DHC:91



injunction has been sought, is concerned, it is only noted to be rejected. Seeking injunctive relief as “further relief” does not serve the purpose of proviso to Section 34 when admittedly the possession is not with the co-owners of the plaintiff and the plaintiff himself is also not in actual physical possession of the suit property. The object of proviso to Section 34 is to avoid multiplicity of suit, therefore, the plaintiff must include all possible reliefs in a single suit. Seen in this light, the expression “further relief” referred to in the proviso to Section 34 of the Act will have to be a relief flowing directly and necessarily from the relief of declaration as sought in the suit.

31. In the context of the present case, the declaratory relief without the prayer for consequential relief of possession is incomplete, when such possession is undisputedly with third party on the basis of sale deed under challenge. In *Executive Officer, Arulmigu Chokkanatha (supra)* as well, the plaintiff therein had only sought declaratory relief along with mandatory injunction without seeking the relief of recovery of possession despite the plaintiff being out of possession. Notwithstanding mandatory injunction having been sought, the Hon’ble Supreme Court held the suit to be clearly not maintainable without the relief of recovery of possession.

32. The reliance placed by the plaintiff on the decision of *Akkamma (supra)* is misconceived inasmuch as in the said case the plaintiff therein had sought the relief of declaration of ownership of the suit property alongwith the injunctive relief against the defendants from interfering with the possession of the plaintiff therein. The Hon’ble Supreme Court, in the said judgment has noted that the plaintiff therein had, in clear terms, claimed in the plaint that he has been in possession of the suit property, whereas in the



present case, the Court finds that the plaintiff was never in possession of the suit property.

33. It is trite law that the provision of Order VII Rule 11 is mandatory in nature. It casts a duty on the court to reject the plaint when it finds that the suit is barred by law.¹ In view of the above discussion, this court is of the considered view that the suit is clearly barred by law under the proviso to Section 34 of the Specific Relief Act, 1963, therefore, it is a fit case to exercise power under Order VII Rule 11 CPC.

34. Before parting, this court deems it necessary to deal with the final contention of the learned counsel for applicants/defendants to the effect that the relief in the suit has not been properly valued. It may be noticed that since the plaintiff is not an executor of the impugned Sale Deed dated 12.11.2012, therefore, he has rightly sued for the declaration to the effect of the Sale Deed be declared null and void *ab-initio*, but as the plaintiff is not in possession and the relief of possession ought to have been claimed by the plaintiff, however, the same has not been claimed. The plaint has been cleverly drafted to suggest constructive possession of the plaintiff as a joint owner/co-parcener to overcome the requirement of paying the court fee, but as noted above, the question of plaintiff being in constructive possession does not arise in the present case.

35. The law is well settled that where a person who has not executed a sale deed and is in possession of the property seeks declaration, he has to merely pay a fixed court fee under Article 17(iii) of the Second Schedule of the Court-Fees Act, 1870. However, where the non-executant of the sale

¹ (2020) 7 SCC 366, Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others [para 23.6 and 23.15]



deed is not in possession, then the position would be different. He will have to claim possession as well and pay an *ad-valorem* court fee as per Section 7(iv)(c) of the Act. Reference in this regard may be had to the decision of ***Suhrid Singh*** (*supra*) wherein the Hon'ble Supreme Court observed as under:

*7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. **If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.***

(emphasis supplied)

36. In view of the above discussion, the Court is satisfied that the suit has not been properly valued for the purposes of court fee. Though the course available to Court under order VII Rule 11 CPC is to grant time to the



2025:DHC:91



plaintiff to make good the deficit court fee, but as this Court otherwise finds that the plaint is liable to be rejected under Order VII Rule 11 CPC read with proviso to Section 34 of the Specific Relief Act, no useful purpose would be served in keeping the suit pending for the purpose of permitting the plaintiff to make up the deficiency in court fee since in any event even after payment of such deficit court fee, the plaint would be liable to be rejected².

37. Consequently, the application under Order VII Rule 11 is allowed and the plaint is rejected. Resultantly, the suit is dismissed and the application is disposed of.

38. The suit alongwith all pending applications, stands disposed of.

VIKAS MAHAJAN, J

JANUARY 10, 2025

MK

² See *Manjeet Kaur & Ors. v. Sukhdev Singh & Anr.*, 2013 SCC OnLine Del 4479 [para 27]