



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.06.2025

+ **C.R.P. 95/2024 & CM APPL. 14706/2024**
HIMANSHU KHANNA & ANR.Petitioners

versus

RAJEEV KHANNA & ANR.Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Jatan Singh, Sr. Adv. with Mr. Naman Gupta, Mr. Tushar Lamba & Ms. Mansi Goyal, Adv.

For the Respondents : Mr. Rajeev Khanna, Adv. in person for R1 & R2.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the order dated 18.11.2023 (hereafter '**impugned order**'), passed by the learned ADJ, South District, Saket Courts, New Delhi, whereby the application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') was dismissed.

2. The brief facts of the case are that the respondents filed a petition under Section 278 of the Indian Succession Act, 1925 for



probate of the last will and testament dated 07.12.2010 of late Smt. Swadesh Khanna. The respondents are the sons of Late Mrs. Swadesh Khanna. The husband of late Smt. Swadesh Khanna and her son—Sanjeev Khanna were impleaded as respondents in the petition. The petitioners are the legal heirs of Late Mr. Sanjeev Khanna. The respondents were named in the subject will as executors and by way of the will, Late Mrs. Swadesh Khanna had bequeathed her movable and immovable properties, including, a property in Malviya Nagar, in favour of the respondents.

3. The petitioner filed an application under Order VII Rule 11 of the CPC for dismissal of the suit contending that the probate case was not maintainable as the Court had no territorial or pecuniary jurisdiction to entertain the same. It was alleged that the respondents had misrepresented the value of the properties and undervalued the case. It was further alleged that the testator could not have unilaterally bequeathed the property in Malviya Nagar as the same was an ancestral property.

4. By the impugned order, the learned ADJ dismissed the application under Order VII Rule 11 of the CPC by observing that there was no merit in the pleas agitated by the petitioners.

5. The learned senior counsel for the petitioners submitted that the impugned order is unsustainable in law and the application filed by the petitioners under Order VII Rule 11 of the CPC was dismissed mechanically.



6. He submitted that the learned ADJ failed to appreciate that the case filed by the respondents is based upon a forged and fabricated will of Late Mrs. Swadesh Khanna and the said fact is evident from the judicial record.

7. He submitted that the case is also beyond the territorial and pecuniary jurisdiction of the learned Trial Court. He submitted that the respondents have misrepresented the value of the properties to evade filing appropriate court fees.

8. He submitted that the respondents have also suppressed material facts from the learned Trial Court and the learned Trial Court lacks territorial jurisdiction as one of the bequeathed properties is located in Gurgaon and even otherwise, the permanent abode of Late Mrs. Swadesh Khanna was in Gurgaon. He submitted that the testator also passed away in Gurgaon and the impugned Will was also executed in Gurgaon. He submitted that the learned Trial Court is only entitled to grant letters of succession in respect of properties which are located within its districts. He placed reliance on Section 273 of the Indian Succession Act, 1925.

9. He further submitted that the case of the respondents is bereft of any cause of action as the properties could not be bequeathed by Late Mrs. Swadesh Khanna unilaterally on the basis of concerned will.

10. He submitted that the case has been filed in connivance by the petitioners and the husband of Late Mrs. Swadesh Khanna.



11. *Per contra*, the learned counsel for the respondents submitted that one of the properties that have been bequeathed is located in Malviya Nagar and therefore the Trial Court has territorial jurisdiction. They submitted that the case has not been undervalued as is alleged by the petitioners.

12. They further submitted that the question in relation to title of the bequeathed properties cannot be delved into in probate proceedings and the husband of Late Mrs. Swadesh Khanna has also testified in favour of the respondents.

13. They submitted that the permanent abode of the testator was in Delhi, however, she passed away in Gurgaon when she was temporarily residing there with her family due to ill health.

ANALYSIS

14. At the outset, it is relevant to note that the petitioner has challenged the impugned order by invoking the revisional jurisdiction of this Court. It is trite law that the scope of revision under Section 115 of the CPC is very limited and is to be exercised only if the subordinate Court appears to have exceeded its jurisdiction or to have failed to exercise its jurisdiction, or if the subordinate Court has exercised its jurisdiction illegally or with material irregularity. In the case of *Varadarajan v. Kanakavalli* : (2020) 11 SCC 598, the Hon'ble Apex Court highlighted that merely because the High Court has a different view on the same facts, the same is not sufficient to



interfere with the impugned order. The relevant portion is reproduced hereunder:

*“15...The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing court as if it was acting as the first court of appeal. An order passed by a subordinate court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. **The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing court.** Consequently, the order passed by the High Court is set aside and that of the executing court is restored. The appeal is allowed.”*

(emphasis supplied)

15. This Court also considers it apposite to appreciate the law in relation to Order VII Rule 11 of the CPC. The said Rule provides for summary dismissal of a suit at the threshold, before the parties have led their evidence, if one of the grounds stipulated therein is made out. The purpose of the said provision is to stifle sham civil actions and quell bogus and meaningless suits at the outset when the said suits ex facie appears to be an abuse of the process of law, without further wasting judicial time.

16. Considering that the power to terminate the action without even allowing the plaintiff to lead evidence and establish its case is a drastic one, the Court is required to limit itself to discerning whether the plaint prima facie discloses a cause of action by perusing the substance of the averments, without paying any heed to the pleas taken in the written statement. While the Court is not precluded from



intervening when the litigation is manifestly vexatious, at the same time, if a prima facie case is made out, it is not open to the Court to conduct an enquiry into the merit or trustworthiness of the allegations. The Hon'ble Apex Court in the case of ***Dahiben v. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366*** has succinctly discussed the law in relation to Order VII Rule 11 of the CPC. The relevant portion of the same is reproduced hereunder:

“23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.

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23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court....

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by



scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 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...*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (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, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain v. Rajiv*



Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823.

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. **If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.**”*

(emphasis supplied)

17. In the present case, the petitioner is essentially seeking rejection of plaint on account of the respondents having concealed the true value of the properties and undervalued the case to evade paying appropriate court fees. It is argued that the learned ADJ does not have the pecuniary jurisdiction to entertain the case. It is further the case of the petitioner that the case not maintainable as the learned ADJ lacks territorial jurisdiction as one of the properties is admittedly situated in Gurugram, Haryana. It is argued that the case is bereft of cause of action as the testator could not have bequeathed the property in Malviya Nagar.

18. By the impugned order, the learned ADJ dismissed the application filed by the petitioner under Order VII Rule 11 of the CPC by observing that while it is argued that the Court did not have pecuniary jurisdiction and the case was undervalued, however, as the valuation reports with respect to the properties had not been received. At this juncture, the petitioner has abysmally failed to show as to how the court fees is insufficient. In the absence of valuation reports, it cannot be pre-empted that the properties have been undervalued by the



respondents. An enquiry into the said aspect cannot be undertaken while adjudicating an application under Order VII Rule 11 of the CPC. Moreover, as also noted by the learned ADJ, in case it is later found that the case is undervalued or insufficiently stamped, the Court can always call upon the respondents to correct the error within a fixed time period and the probate of the subject will would only be granted after the requisite court fee is furnished.

19. The petitioner cannot seek rejection of the plaint under Order VII Rule 11 of the CPC which clearly mentions that the plaint shall be rejected if the plaintiff fails to correct the valuation or supply the requisite stamp paper within a time to be fixed. If at a later stage, the Trial Court comes to a conclusion that the Court fees is insufficient, an opportunity is still to be given to the respondents to correct the valuation and pay the requisite fee. It is on the failure of the respondents to pay that the probate case can be rejected.

20. The only other ground agitated by the petitioner is that the learned ADJ has no territorial jurisdiction to entertain the case as one of the properties bequeathed in the subject will is situated in Gurugram, Haryana, and that the testator was not entitled to bequeath the other property in Malviya Nagar. Much emphasis has been placed by the petitioner on the fact that since one of the properties in the will is admittedly situated in Gurugram, the learned ADJ does not have the territorial jurisdiction to adjudicate the matter. The learned ADJ has rightly found the said contention to be unmerited and observed as under:



“7. Submissions of the applicant regarding lack of territorial jurisdiction of this court for issuance of Probate in respect of one of the property mentioned in the Will, which is situated in Gurugram, Haryana, lacks merit. Section 270 of the Indian Succession Act, 1925 provides that Probate of the Will or Letter of Administration to the estate of a deceased person may be granted by a District Judge if it appears by a petition that the Testator at the time of his decease had a fixed place of abode or any property movable or immovable within the jurisdiction of the judge. Admittedly, the petition at Para No. 6 (i) mentions an immovable property at Malviya Nagar, New Delhi which falls within the jurisdiction of this Court.”

(emphasis supplied)

21. The mere existence of one of the properties outside the jurisdiction of the learned ADJ does not oust the jurisdiction of the learned ADJ. In view of Section 270 of the Indian Succession Act, 1925, the learned ADJ has the jurisdiction to grant probate as admittedly, one of the properties is situated in Malviya Nagar, Delhi. While Section 273 of the Indian Succession Act, 1925 provides that probate or letters of administration granted by a District Judge in relation to properties located in another State are only valid if the value of the said property does not exceed ₹10,000/-, the said provision does not deal with jurisdiction of the Court to entertain and decide a petition for grant of probate or letters of administration. The said provision only deals with the binding force or effect of such probate granted by the District Judge. In the case of ***Kanta v. State : 1985 SCC OnLine Del 136***, this Court observed that even a movable property of a trifling value conferred jurisdiction on the Court, but ultimately decided against entertaining the case as substantial property was located out of the State and the parties were residing in Bombay.



In the present case, it is argued that the Court has *no* territorial jurisdiction at all. The said argument is unmerited. The relevant portion of the aforesaid judgment is as under:

“7. Following preliminary issues were framed by H.C. Goel, J. on 30th August 1984:

1. Whether the courts at Delhi have got jurisdiction to entertain the petition and grant the relief as prayed for?

2. Whether in view of the provisions of Sections 271 and 273 of the Indian Succession Act, the petition should be heard and decided by this Court?

Issue No. 1

*8. The relevant provision regarding territorial jurisdiction is Section 270 of the Indian Succession Act which reads as under...**It is, therefore, clear that in order that a Court may have territorial jurisdiction, the deceased should have either a fixed place of abode or movable or immovable property within its jurisdiction.***

In the present case it is common ground between the parties that the fixed place of abode of the deceased Sukhdev Singh Sandhu was Bombay. However, Schedule No. 1 attached to the petition gives the particulars of the property movable as well as immovable left by the deceased. The only property, as per that Schedule, in the Union Territory of Delhi is a deposit in the amount of Rs. 956.63 p. in account No. 35/59317 in the State Bank of India, Parliament Street, New Delhi. There is no doubt that this deposit is movable property and as such existence of this movable property confers jurisdiction on Delhi Court in view of Section 270 of the Act.

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***10. The net result is that subject to the provisions of S. 271 of the Act, which are being discussed while dealing with issue No. 2, this court has jurisdiction to entertain this petition.** While dealing with issue No. 2 the provisions of S. 273 of the Act are also being discussed. Notwithstanding concurrent jurisdiction of District Judge and High Court, provisions of S. 273 do not keep them at par. These provisions make the probates or letters of administration issued by the High Court conclusive in respect of property situated throughout India but they limit in operation such conclusiveness in respect of probates or letters of administration issued by District Judge. With above observations the issue is, therefore, decided in favour of the petitioner.*



Issue No. 2.

11. Section 271 of the Act reads as under...It is clear from a bare reading of the aforesaid provision that when the deceased at the time of his death did not have any fixed abode within the jurisdiction of the court, it shall be in the discretion of the Court to refuse the application if in the judgment of the court it could be disposed of more justly or conveniently at another place. Therefore, in the present case, the said discretion is to be exercised, even though in viewing Section 270 of the Act this Court had territorial jurisdiction to entertain the petition. In this way the field of Section 270 of the Act is limited by the provisions of Section 271 of the Act.

12. It will be apparent from a perusal of Schedule No. I that movable property of a very trifling value is situated in the union territory of Delhi. As against that substantial property both movable and immovable is situated in the State of Punjab and State of Maharashtra. As already mentioned, the property which is situated in the union territory of Delhi is of the value of Rs. 956.63. That property is deposit in State Bank of India. As against that, immovable property of the value of Rs. 1,36,000/- is situated in the State of Punjab and both movable and immovable property of the value of Rs. 6,82,035.63 is situated in the State of Maharashtra. Further, it is common ground that all the parties including the petitioner are residing at Bombay. Sukhdev Si556 Sandhu, deceased, at the time of his death had his fixed abode at Bombay. Hence there can be no manner of doubt that Bombay is the best place where this petition should have been filed. In any case, Delhi is most ill-suited for the said purpose.

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18. But I do not agree with the learned counsel for the objector. In my opinion the interpretation he has put forth is wrong. **The limit of Rs. 10,000/- as to the value of the property situated in another State is only with respect to the Court of District Judge while the jurisdiction of the High Court is unlimited. It is apparent from a plain reading that the main body of the section makes the probate or letters of administration issued by the High Court or District Judge binding and conclusive throughout the State in which the High Court or the District Judge is working. The proviso to Section 273 of the Act provides binding force of the probate or letters of administration with respect to any property which is situated even in another State.** But that proviso places a limit of value of Rs. 10,000/- in respect of binding force of the probate or



letters of administration issued by the District Judge while no such limit has been placed as far as High Court is concerned. The words limiting jurisdiction are only with the word “District Judge” and not with the High Court. As far as High Court is concerned, there are words reading, “shall, unless otherwise directed by the grant, have like effect throughout the other State”. As far as the High Court is concerned, the proviso reads as under...That means that the probate and letters of administration issued by High Court have a binding force even in respect of property in a State other than the one in the High Court is located...

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20... Section 273 of the Act does not deal with the jurisdiction of the High Court or the District Judge to entertain and decide a petition for grant of letters of administration or probate. That provision only deals with the effect and binding force of grant of letters of administration or probate by the High Court or the District Judge. It has nothing to do with the territorial jurisdiction. The territorial jurisdiction is dealt with by Sections 270, 271 and 300 of the Act which have been referred to already. Had the intention of the legislature been that section 273 of the Act would deal with the territorial jurisdiction also, there was hardly any necessity of enacting Sections 270, 271 and 300 of the Act. Therefore, on harmonious construction of Sections 270, 271, 273 and 300 of the Act it is clear that Section 273 has nothing to do with the territorial jurisdiction and it only deals with the binding force or effect of the letters of administration and probate issued by a High Court or District Judge.

21. When a Court has no jurisdiction, the appropriate order is to return the petition or the plaint for presentation to the court of competent jurisdiction. **However, in this case I have held that the court has jurisdiction** but it is declining to exercise the same under Section 271 of the Act. That provision (Section 271 of the Act) clearly specifies that when discretion is exercised against an applicant, the application is to be refused. That means that the application is not to be returned for presentation to the proper Court. Under these circumstances I refuse the application. The further proceedings are stopped. The applicant will, however, not be debarred from making appropriate application in the State of Maharashtra or the State of Punjab.”

(emphasis supplied)

22. It is also argued that the jurisdiction of the learned ADJ is



ousted as the testator had her permanent abode in Gurugram and she had also died in Gurugram. It is pertinent to note that the said argument in relation to the permanent abode of the testator was not agitated in the application under Order VII Rule 11 of the CPC or before the learned ADJ. Even otherwise, the same is controverted by the learned counsel for the respondents who has argued that the testator was only temporarily residing in Gurugram on account of her ill health.

23. Insofar as the entitlement of the testator to bequeath the property situated in Malviya Nagar is concerned, it is argued that the said property is an ancestral property and the same could not have been bequeathed by the testator. It is not the petitioner's case that the testator had no right in the property at Malviya Nagar, and even otherwise, the question of the title of the testator is immaterial in probate proceedings. The learned ADJ has rightly taken note of the judgment in the case of *Chiranjilal Shrilal Goanka v. Jasjit Singh: (1993) 2 SCC 507* and observed that the question of title or ownership cannot be decided by a probate Court. It is settled law that it is not open to the probate court to venture into the question of determining the title of the testator *qua* the bequeathed properties or whether a bequest is good in law and its jurisdiction is limited to ascertaining the valid execution of the will only. This argument is thus unmerited.

24. In view of the aforesaid discussion, I find no reason to interfere with the impugned order.



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25. The present petition is dismissed in the aforesaid terms. Pending application also stands disposed of.

JUNE 11, 2025

AMIT MAHAJAN, J