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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**+ **CS(OS) 432/2021****MRS. ANJU CHADHA**

W/O MR. VIRENDER CHADHA,
D/O LATE SH. RAMESH CHANDER MADAN
PRESENTLY RESIDING AT: FLAT NO.136,
MANDAKINI ENCLAVE,
NEW DELHI-110019

...PLAINTIFF

*(Through: Mr. Rishi Bharadwaj with Mr. Rahul Mehalwal,
Advocates.)*

versus

MR. BHAVESH MADAN

S/O LATE SH. RAMESH CHANDER MADAN
RESIDENT OF: FLAT NO.137, MANDAKINI ENCLAVE,
NEW DELHI-110019

...DEFENDANT NO.1

MR. SUMESH MADAN

S/O LATE SH. RAMESH CHANDER MADAN
PRESENTLY RESIDING AT:
365 RIDGE ROAD APARTMENT A06,
DAYTON NEW JERSEY 08810

...DEFENDANT NO. 2

*(Through: Mr. Rajesh Mahendru with Mr. Birendu Chaudhary,
Advocates for D1 and Ms. Gita Dhingra, Advocate for D2.)*

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Reserved on: 08.08.2025

Pronounced on: 09.09.2025



JUDGMENT

I.A. 2101/2024 (Application Under Order 7 Rule 11 of CPC On Behalf Of Defendant No.1 For Rejection Of Plaint With Respect To Property No. 136, Mandakini Enclave, Delhi)

The present application has been filed on behalf of the defendant(s) under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'), seeking rejection of the plaint, to the extent it pertains to Property No. 136, Mandakini Enclave, New Delhi, on the ground that the plaint discloses no cause of action in respect of the said property.

FACTUAL MATRIX

2. The present suit has been filed by the plaintiff seeking the relief of partition and possession in respect of various movable and immovable properties, which are claimed to be part of the joint family estate. The plaintiff and the defendants are real sisters and brothers, being the daughter and sons of late Sh. R. C. Madan, who passed away intestate on 30th December, 2014, and late Smt. Kamlesh Madan, who passed away intestate on 17th June, 2020. Upon the demise of both parents, the parties became the only legal heirs, each entitled to a 1/3rd undivided share in the estate left behind.

3. The suit properties and business interests, which are stated to be the subject matter of partition, are detailed as follows:

Immovable Properties:

- (i) 1/3rd share of Smt. Kamlesh Madan in Property No. 4360A–4362, Main Bazar, Paharganj, New Delhi.



- (ii) 1/3rd share of Smt. Kamlesh Madan in Property No. 4361, Main Bazar, Paharganj, New Delhi.
- (iii) 1/3rd share out of 1/4th share in Property No. D-3, LSC 2, Vasant Vihar, New Delhi (owned by late Sh. R. C. Madan).
- (iv) Property in Village Mewla Maharajpur, Haryana (owned by late Sh. R. C. Madan).
- (v) Property in Village Anangpur, Haryana (owned by late Sh. R. C. Madan).
- (vi) Property No. 136, Mandakini Enclave, New Delhi.

Movable Assets:

- (vii) All bank accounts, fixed deposits, and investments held in the name of Smt. Kamlesh Madan.
- (viii) Locker held by Smt. Kamlesh Madan in DCB Bank, Parliament Street Branch, New Delhi.

Shares and Business Interests:

- (ix) Shares of Smt. Kamlesh Madan in Travellers (India) Forex Blue Pvt. Ltd.
- (x) Shares of Smt. Kamlesh Madan in Madan Travellers Guest House Pvt. Ltd.
- (xi) Joint family businesses, including:
 - a. Travellers (India) Forex Blue Pvt. Ltd.



b. Madan Travellers Guest House Pvt. Ltd.

c. Madan Stores

4. The ground for seeking rejection of the plaint, as raised in the present application, is specifically in relation to Property No. 136, Mandakini Enclave, New Delhi, which is claimed by the defendant(s) to be their exclusive and self-acquired property, and not part of any joint family estate. It is submitted by the defendants that the plaint is bereft of any material facts or cause of action with respect to the said property, and accordingly, the plaint is liable to be rejected *qua* the said property.

SUBMISSIONS OF PARTIES

5. The submissions of Mr Ashish Singh, learned counsel appearing for defendant No.1 are as follows:

i. At the outset, it is submitted that the plaintiff has instituted the present suit for partition, erroneously asserting that various properties, including Flat No. 136, Mandakini Enclave, New Delhi, are jointly owned by the parties' parents. The inclusion of the aforementioned property in the schedule of properties sought to be partitioned is wholly untenable, devoid of merit, and lacks any legal or factual foundation. The plaint is conspicuously silent on the basis of the plaintiff's claim over the said property, and fails to provide any cogent averments to substantiate her purported entitlement to seek its partition.

ii. It is an incontrovertible and admitted fact that Flat No. 136, Mandakini Enclave, New Delhi, is exclusively registered in the name of defendant No.1 and his wife, having been lawfully acquired by them



through a duly executed and subsisting registered sale deed. The plaintiff has not raised any challenge or allegation disputing the validity of the title documents in the plaint, thereby rendering her claim over the property baseless and unsustainable.

iii. The plaintiff has deliberately suppressed a material fact, namely, that a decree for possession dated 18.12.2023 was passed against her and her husband (acting as Special Power of Attorney for defendant No.2) in CS No. 619/2020, instituted by defendant No.1, concerning the same property. The present suit appears to be a *mala fide* counterblast, strategically filed to undermine and frustrate the execution of the aforementioned decree, thereby amounting to an abuse of the process of this Court.

iv. Further, it is submitted that for the first time, and without any amendment to the plaint, the plaintiff has belatedly sought to assert in her replication that the property was purchased using joint family funds and that defendant No.1 allegedly lacked an independent source of income to acquire it. These assertions constitute new facts introduced without following the due process of amendment and are, thus, legally impermissible and incapable of establishing a cause of action. It is a well-settled principle of law that new pleas or facts cannot be raised in replication when the plaint is silent on such matters. The replication cannot cure inherent defects in the plaint or serve as a substitute for it.



Reliance is also placed on the decision in *Rajeev Tandon v. Rashmi Tandon*¹.

v. Even assuming, without conceding, the plaintiff's claim that the property was acquired using joint family funds, such a plea tantamounts to an allegation of benami ownership, which is expressly barred under Section 4 of the Benami Transactions (Prohibition) Act, 1988 (*Benami Act*). The plaint contains no averments regarding the existence of a Hindu Undivided Family (HUF) or any recognized exception under the Act that would permit such a claim. Consequently, the plaintiff's assertions are legally untenable.

vi. Conclusively, it is submitted that the plaint is liable to be rejected under Order VII Rule 11(a) CPC, as it fails to disclose any cause of action in respect of Flat No. 136, Mandakini Enclave, New Delhi. The plaint merely includes the said property in the schedule without any factual basis, averment, or legal foundation establishing the plaintiff's entitlement to seek partition thereof. Furthermore, this Court is empowered under Order XII Rule 6 CPC to pronounce judgment on the basis of admitted facts. In the present case, the following facts are undisputed:

- a) The registered ownership of the said property vests solely in the name of defendant No.1 and his wife;
- b) There is no recital or reference in the sale deed or any other document indicating joint ownership or family investment; and

¹ 2019 SCC OnLine Del 7336



c) A prior decree for possession has already been passed against the plaintiff, confirming her eviction from the said property.

vii. These admitted and uncontested facts clearly establish that the plaintiff has no enforceable right or claim over the said property, and accordingly, the plaint deserves to be rejected to the extent it pertains to this property.

viii. In support of these submissions, defendant No.1 places reliance on the decisions in ***GM Singh v. Trilochan Singh***², ***Baljit Kaur v. Surjeet Kaur***³, and ***Rajeev Tandon***.

6. *Per contra*, the submissions advanced by Mr. Rishi Bhardwaj, learned counsel on behalf of the plaintiff are as follows:

i. It is submitted that the application filed by defendant No.1 is wholly untenable and lacking in legal or factual merit. The properties listed in Paragraph 5 of the plaint, including the aforementioned flat, were indisputably acquired through the proceeds of joint family businesses. This critical fact cannot be disregarded. It is highlighted that the Madan Store was originally established by late Shri Chunni Lal, the grandfather of the plaintiff and defendants No.1 and 2. Furthermore, properties bearing Nos. 4360A-4362 and 4361, situated at Main Bazaar, Paharganj, New Delhi, were acquired by the late Shri R.C. Madan, reinforcing the joint family's proprietary interest.

² CS(OS) 2340/2014

³ (2016) 229 DLT 737



- ii. It is further submitted that, following the demise of the late Shri Chunni Lal, the Madan Store was continued and managed by late Shri R.C. Madan. Upon his passing, the joint family business, along with the properties acquired thereunder, became subject to partition among the lawful heirs. Defendant No.1 has neither pleaded nor adduced any documentary evidence to substantiate that the consideration for Flat No. 136, Mandakini Enclave, Alaknanda, was paid from his or his wife's personal funds. Moreover, defendant No.1 has failed to disclose any independent source of income from which the said property could have been acquired, thereby undermining his claim of exclusive ownership.
- iii. The contention of defendant No.1 that the plaintiff failed to disclose the pendency of a suit filed by him against the plaintiff and her husband before the Saket District Court, is wholly misplaced. A careful perusal of Paragraph 25 of the plaint unequivocally establishes that the cause of action arose on 18.11.2020, when defendant No.1 instituted a suit for injunction against the plaintiff and her husband concerning the same property. This disclosure negates any allegation of suppression of material facts.
- iv. The additional documents filed by defendant No.2, including bank statements of the late Shri R.C. Madan, the late Smt. Kamlesh Madan, and defendant No.2, manifestly demonstrate that Flat No. 136, Mandakini Enclave, Alaknanda, was not exclusively purchased by defendant No.1 or his wife. On the contrary, the acquisition was funded through joint family resources derived from the aforementioned family businesses and contributions from defendant No.2. Defendant No.1 has



conspicuously failed to produce any countervailing evidence to substantiate that the property was purchased with independent personal funds.

- v. It is further submitted that a handwritten note was authored by defendant No.1, which unequivocally confirms that Flat No. 136, Mandakini Enclave, formed part of a family settlement. As per the submission, the said document is pivotal and indispensable for the proper adjudication of the ownership and partition of the property in question. It is further submitted that such critical facts and evidence warrant examination at trial, and the discretionary power under Order VII Rule 11 of the CPC, cannot be invoked to summarily dismiss the plaint at this preliminary stage.
- vi. The reliance placed by defendant No.1 on the plaint filed before the Tis Hazari Court further corroborates that the nucleus of acquisition of the disputed property lies in the joint family businesses, namely: (A) Traveller (I) Forex Pvt. Ltd., (B) M/s Madan Traveller Guest House, and (C) Madan Store. It is contended that defendant No.1 has neither pleaded nor furnished any evidence to demonstrate that the property was acquired through independent income, thereby failing to rebut the plaintiff's claim.
- vii. It is submitted that the present application is entirely devoid of merits and appears to be a deliberate attempt to mislead this Court by concealing material facts. To buttress, it is submitted that the application



seeks to obfuscate the true nature of the property's acquisition and the plaintiff's legitimate claim to partition.

viii. Conclusively, it is submitted that the present application is liable to be rejected outrightly as it is premised solely on the defence of defendant No. 1. It is a settled legal position that a plaint can only be rejected based on the averments contained within the plaint itself, and the defence of the defendant cannot be considered at this preliminary stage. Further, it is submitted that the application does not fall within the scope of the grounds specified under Order VII Rule 11 of CPC, and therefore, the application is without merit and deserves to be dismissed in its entirety. The plaintiff relies on a judgment of this Court in ***Gagandeep Kaur v. Ratandeep Singh Grover***⁴.

ANALYSIS

7. For the reasons to follow, this Court, at the threshold, finds that the present application is liable to be rejected, both on principle and facts. One of the foundational principles underlying the concept of rejection of plaint under Order VII Rule 11 of CPC is that the plaint cannot be rejected partially. Either the plaint has to be rejected as a whole or there can be no rejection at all. In this regard reference may be made to the judgment of the Supreme Court in ***Madhav Prasad Aggarwal v. Axis Bank Limited***⁵ and ***Roop Lal Sathi v. Nachhattar Singh Gill***⁶, which have been followed in ***Dr. Ramesh Chander Munjal v. Dr. Suraj Munjal***⁷. Accordingly, the

⁴ 2025:DHC:5260

⁵ (2019) 7 SCC 158

⁶ (1982) 3 SCC 487

⁷ 2022 SCC OnLine Del 1045



application under Order VII Rule 11 for rejection of the plaint only *qua* a particular component of the suit property cannot be entertained, as it essentially amounts to partial rejection of the plaint, which is impermissible.

8. The above proposition of law is also reiterated by the Supreme Court in its recent decision in ***Central Bank of India v. Prabha Jain***⁸, which held as follows:

“23. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order 7 Rule 11CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order 7 Rule 11CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI Act and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order 7 Rule 11CPC. 24. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order 7 Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.”

9. In the present case, the application seeks rejection of the plaint only *qua* one property, namely Property No. 136, Mandakini Enclave, New Delhi, which forms part of the suit properties comprising of various other properties listed in the plaint, which is not legally sustainable under Order VII Rule 11 of CPC. There is no quarrel with respect to the fact that the rejection sought herein is only *qua* a partial component of the suit property. Having observed the same, it would be apposite to examine the factual controversy to ascertain whether, notwithstanding the principle against partial rejection of plaint, any case for rejection on merits is made out or not.

⁸ (2025) 4 SCC 38



10. At this stage, it may be relevant to take note of the pleadings concerning the subject property, in the replication filed on behalf of the plaintiff:

“8. It is pertinent to mention here that the said property i.e. 136, Mandakini Enclave, Delhi as purchased from the funds of joint family and Defendant No.1 did not have any other source of income to purchase the said property

That it is pertinent to mention here that since death of father of parties, the Plaintiff and her husband have been staying in the said flat, they have been maintaining and paying all the charges in respect of the said flat No. 136 Mandakini Enclave including the electricity, water, maintenance, society, bills, gas, car cleaner, etc in cash to the Defendant No. 1, however during the lock down period since the Defendant No.1 could not go and deposit the said charges with the authorities he called upon the husband of Plaintiff to deposit the said money in their bank account on 25/06/2020 and for the said purpose the Defendant No.1 shared their bank account details with the Plaintiff on whatsapp which was done by the husband of Plaintiff.

10.....It is submitted that the purchasing of property No.136, Mandakini Enclave, Delhi in the joint name of his wife using the funds of joint family is showing the ill intention of Defendant No.1.

13.iv) That the contents of Para 13 iv) as stated are wrong & denied. It is correct that the defendant No.1 is presently residing at flat No.137, Mandakini Enclave, New Delhi110019 however Defendant No.1 with the fraudulent intention got the same transferred in his own name. Similarly, the flat No.136, Mandakini Enclave, New Delhi110019 was also got registered jointly in his own name and his wife's name which was purchased using joint family funds. It is wrong & denied that Flat no. 510, Mandakini Enclave, New Delhi, 110019, which was originally purchased by the father and later transferred in the name of the Mother and after the demise of the father, transferred to defendant No.2.”

11. The above paragraph shows that in the replication filed by the plaintiff, several assertions have been made which directly challenge the claim that the property belongs solely to defendant No.1 or his wife. The



plaintiff asserts that Flat No. 136, Mandakini Enclave, though registered in the name of defendant No.1 and his wife, was actually purchased using joint family funds, and that defendant No.1 had no independent source of income at the time of purchase.

12. Furthermore, she asserts the long-term possession and maintenance of the said flat along with her husband, and refers to instances of payment of utility charges, as well as communication between the parties supporting this claim. These pleadings go to the root of the issue and underscore the fact that the dispute involves mixed questions of law and fact, which require detailed examination.

13. The plaintiff also claims that the property, though registered in the name of defendant No.1 and his wife, was purchased out of joint family funds. As per the defendant, this averment is in the nature of an allegation of benami transaction and the same could not be permitted. Whether such claim is barred under Section 4(1) of the Benami Act, or falls within the exceptions under Section 4(3), are triable issues, requiring evidence. They cannot be adjudicated summarily under Order VII Rule 11 CPC. The decision in **Gagandeep Kaur**, also relied upon by the plaintiff, is relevant in this regard. Relevant paragraph supporting the aforesaid is as follows:

“23. In view of the aforesaid legal position, the plea that the suit is barred under Section 4 of the Benami Act, 1988 cannot be adjudicated at the stage of an application under Order VII Rule 11 of the CPC. The factual matrix of the present case must be examined after affording the parties the opportunity to lead evidence or the question of applicability of the legal bar or the exceptions envisaged in the Benami Act, 1988 is a triable issue and can not be adjudicated in a summary manner. The plaint clearly contains assertions that the properties in question were not purchased exclusively for the benefit of the person in whose name they stand, but for the benefit of the entire family, including the plaintiffs”



14. Furthermore, the additional documents filed by defendant No.2, including bank statements of the late Shri R.C. Madan, late Smt. Kamlesh Madan, and defendant No.2 himself, *prima facie* indicate that Flat No. 136 was not exclusively purchased by defendant No.1 or his wife. These documents lend weight to the plaintiffs' contention and highlight the need for evidence to be led to resolve these complex factual issues.

15. The reliance placed by the learned counsel for the defendant no.1 upon **GM Singh**, appears to be misplaced as it is inconsistent with the present facts. The application of Order XII Rule 6 requires a clear and unequivocal admission, which is absent in this case. The parties in the instant case are at dispute with respect to the genesis of acquisition of the subject property. Therefore, reliance on **GM Singh** by the counsel for defendant No.1 is misplaced.

16. Similarly, defendant No. 1's reliance on **Baljit Kaur** is also misplaced, as in the said case, the Court dealt with an application under Order XII Rule 6, and accordingly, applied the principles specific to that provision due to the presence of an unequivocal admission. In contrast, the present application under Order VII Rule 11 CPC cannot apply the same principles due to the lack of such an admission. This distinction was also evident in **Rajeev Tandon**, where the Court applied the principles underlying Order XII Rule 6, further reinforcing that such principles are inapplicable here.

17. In light of the foregoing discussion, the Court concludes that the present application filed under Order VII Rule 11 of the CPC, seeking rejection of the plaint with respect to Flat No. 136, Mandakini Enclave, New



Delhi, is not maintainable, as it seeks an impermissible partial rejection of the plaint, which is contrary to the settled law in *Madhav Prasad Aggarwal v. Axis Bank Limited* and other precedents.

18. Further, the question whether the suit is barred under Section 4 of the Benami Act , involves triable issues requiring evidence and cannot be summarily adjudicated at this stage. As regards the competing set of documents sought to be relied upon by the parties, suffice to note that the same also reveal triable issues and would be crucial for determining the separate or joint status of the property in question during the appreciation of evidence. At this stage, the Court cannot conclude on this aspect. The remedy contemplated under Order VII Rule 11 of CPC is meant to weed out completely frivolous and baseless claims, with no legs to stand in trial, and is not meant to dump the cases which involve legitimate triable questions concerning the rights and liabilities of the parties.

19. Accordingly, application stands disposed of as dismissed.

20. Needless to state, any observations made herein are only for the purpose of deciding the present application and would have no bearing on the final adjudication of the suit.

CS(OS) 432/2021 and I.A. 11700/2021, I.A. 11701/2021, I.A. 1962/2024, I.A. 2693/2024, I.A. 5718/2024, I.A. 46065/2024, I.A. 8441/2025, I.A. 8442/2025

21. List this matter before the concerned Joint Registrar along with all pending applications for taking up further steps in accordance with the extant rules on 10.11.2025.



2025:DHC:8028



22. Thereafter, list before the Court on the date to be assigned by the Joint Registrar.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 09, 2025/ aks/sph