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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CS(OS) 4/2020

ANITA MUNJAL

THROUGH S.P.A SH. R.K. NAGPAL

W/O. LATE LALIT MUNJAL

1323, WORCESTER ROAD,

H-8, FRAMINGHAM MASSACHUSETTS 01701,

1323, WORCESTER ROAD, USA

....PLAINTIFF

(Through:Mr. Samrat Nigam, Sr. Adv with Ms. Priyanka Dagar, Adv.)

Versus

1. VIBHUTI JAUHARI

W/O LATE SH. VINAY JAUHARI

2. MS. TIRISHA

D/O LATE SH. VINAY JAUHARI

BOTH DEFENDANT NOS. 1 & 2 R/O:

G -5 ANNAJIKON

PARADISE SOCIETY, NIBH ROAD ,

KONDWA, PUNE

MAHARASHTRA-411048

3. NIRMALA SALUJA

W/O SH. SUBFIASH SALUJA

K-2/602 CENTRAL PARK 1,

GOLF COURSE ROAD SECTOR 42,

GURGAON 122002



4. URMILA BHATIA
W/O. CDR. J. C. BHATIA
FLAT NO: 11Q2 NRI COMPLEX PHASE -2
PALM BEACH ROAD SECTOR 58
NERUL NAVIMUMBAI- 400706

5. SHASHI NAGPAL
W/O SH. R.K. NAGPAL
R/O. B1/901, DELHI STATE NPEF
CGHS PLOT NO.-1, SECTOR-19,
DWARKA, NEW DELHI-110075

....DEFENDANTS

(Through: Mr. Rajiv Kapoor, Ms. Prity Sharma, Mr Shikar Shant Adv. for D-1&2.)

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Reserved on: 12.08.2025
Pronounced on: 10.09.2025

JUDGMENT

I.A. 14528/2022 (filed on behalf of defendant Nos. 1 and 2 under Order VII Rule 11 r/w 151 CPC)

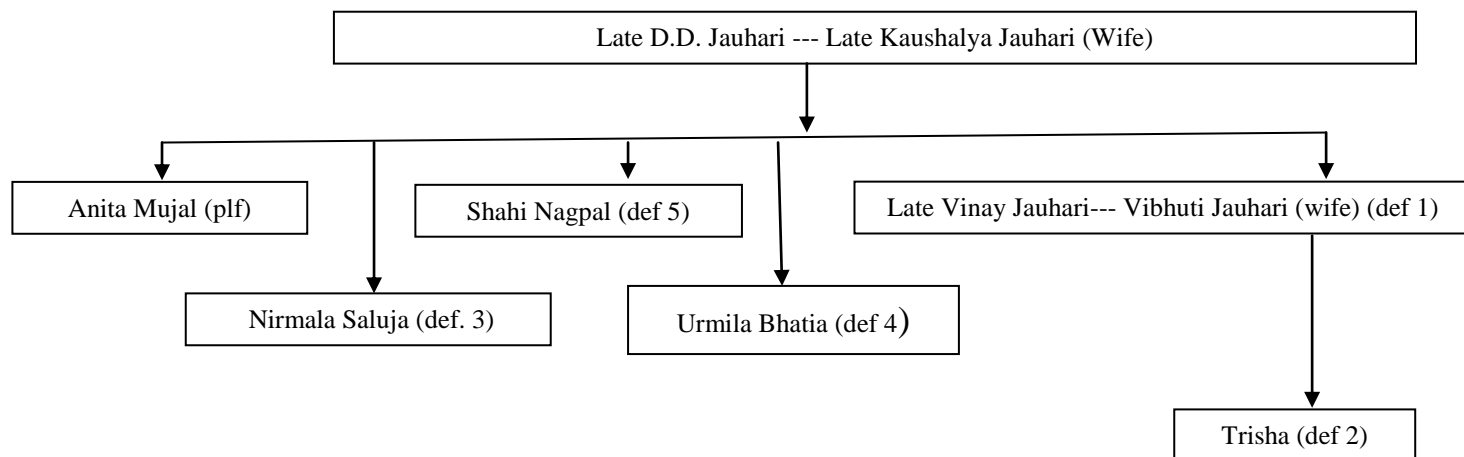
The present suit has been instituted seeking, primarily, partition of the purported joint-family properties of the parties herein. The instant application has been filed by defendants no. 1 and 2 seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure (*hereinafter referred to as the CPC*).

Plaintiff's case

2. The plaintiff and defendants no. 3 to 5 are the daughters of late Shri D.D. Jauhari and late Smt. Kaushalya Jauhari. Late Shri D.D. Jauhari and



late Smt. Kaushalya Jauhari had a son, late Shri Vinay Jauhari, and defendants no. 1 and 2 are his wife and daughter, respectively. The family tree of the parties is produced below, for reference:



3. The properties sought to be partitioned are, (i) Flat bearing no. 115 D, Bathlas Co-operative Group Housing Society Ltd., Plot no. 43, I.P. Extension, Patparganj Delhi-92 (*hereinafter referred to as the Bathla property*) and 'Plot bearing no. 91, Maulsari Road, DLF Qutub Complex, Phase III, Gurugram, admeasuring 490 sq. mt' (*hereinafter referred to as the Gurugram property, and both properties collectively referred to as the suit properties*).

4. The plaintiff claims that the suit properties were purchased out of joint-family funds and from funds raised by the sale of properties left behind by late Shri D.D. Jauhari for the benefit and welfare of the family. However, the Gurugram property was bought in the joint names of late Smt. Kaushalya Jauhari and late Shri Vinay Jauhari, and the share certificate and allotment letter in respect of the Bathla property were in the name of said Shri Vinay Jauhari.



5. The plaintiff avers that at the time of the booking of the Bathla property, late Shri Vinay Jauhari was only 21 years old and pursuing his education, having no source of income. The said property is claimed to have been utilized by late Smt. Kaushalya Jauhari for residential purposes.

6. The plaintiff claims that after the death of late Shri Vinay Jauhari on 21.02.2018, the parties had held talks about the partition of the suit properties. However, defendants no. 1 and 2 proceeded to institute a civil suit for declaration of their title in respect of the Gurugram property, claiming that late Shri Vinay Jauhari had been the absolute owner of same. It is averred that defendants no. 1 and 2 produced in the aforesaid suit, a Gift Deed dated 18.08.2005, purportedly executed by late Smt. Kaushalya Jauhari in respect of her share in the said property, in favour of late Shri Vinay Jauhari. The plaintiff claims that no whisper of the said Gift Deed was made by its executants during their lifetime, and she became aware of the same only during the course of the aforesaid civil suit.

Submissions

7. Mr. Rajeev Kapoor, learned counsel for the applicant-defendants, submits that the plaint ought to be rejected on the following grounds:

- i. The plaint does not disclose any cause of action,
- ii. The suit is barred by the principles of *res judicata*,
- iii. This Court does not have territorial jurisdiction to entertain the suit in respect of the Gurugram property, and
- iv. The suit is barred by limitation.

8. Learned counsel submits that the plaint does not disclose any cause of action as the suit properties were the self-acquired properties of late Shri Vinay Jauhari. He submits that the title documents in respect of the same are



in the names of late Shri. Vinay Jauhari and late Smt. Kaushalya Jauhari. He further submits that the properties of late Shri D.D. Jauhari were sold only in the year 1994, whereas the Bathla property was purchased in the year 1984, and therefore, the plaintiff's claim that the suit properties were bought using joint family funds is misconceived. He further submits that the cash book of late Shri Vinay Jauhari also proves that the suit properties were bought using his own funds.

9. Learned counsel submits that the Gurugram property being situated outside the territorial jurisdiction of this Court, the suit is not maintainable as far as the same is concerned, under Section 16(d) of the CPC.

10. Learned counsel further submits that admittedly, the applicant-defendants have instituted a suit for declaration of their title over the Gurugram property, and the plaintiff has filed an application for impleadment as a party to the said suit, seeking substantially, the same reliefs as in the present suit. Learned counsel submits that once there is a civil suit instituted validly in which the plaintiff is seeking impleadment, there can be no rationale for filing the instant civil suit in respect of the same cause of action.

11. Learned counsel submits that *vide* order dated 19.04.2022 in the civil suit in Gurugram, the aforesaid impleadment application has been rejected by the Court, and therefore, the instant suit, as far as the Gurugam property is concerned, is barred by the principle of *res judicata*.

12. Learned counsel submits that the reliefs claimed in the present suit are barred by limitation, insofar as the plaintiff is effectively seeking nullification of the effects of Share Certificate dated 15.08.1984 and registered Will dated 15.08.1984 executed by late Smt. Kaushalya Jauhari,



in respect of the Bathla property, and registered Sale Deed dated 08.01.1998 along with Gift Deed dated 16.08.2005 in respect of the Gurugram property. He asserts that the said documents, having been executed more than thirty years prior to the institution of the present suit, cannot be challenged herein, as the limitation period for the same has long expired.

13. Learned counsel submits that since the plaintiff claims a share in the suit properties as a legal heir of late Shri D.D. Jauhari, her right to sue for partition would have arisen on the date of his death, i.e., in July, 1978. The limitation period for the same would expire three years therefrom. According to learned counsel, the present suit is barred by limitation on this ground as well.

14. Mr. Samrat Nigam, learned senior counsel appearing on behalf of the plaintiff, opposes the submissions made on behalf of the applicant-defendants, and submits at the outset, that the instant application is misconceived and liable to be dismissed in limine, as the same has been predicated solely on the defence set up by the applicant-defendants and does not have any basis in the plaint averments. He points out that while deciding an application for rejection of the plaint, the Court is required to consider only the plaint averments and the documents relied on therein.

15. Learned senior counsel submits that the plaint clearly discloses a cause of action for the present suit for partition, since it is specifically pleaded that the suit properties were purchased out of the joint family funds and the funds raised from the sale of properties of the plaintiff's father.

16. Learned senior counsel contends that this Court has jurisdiction to adjudicate the present suit under Section 17 of the CPC, since one of the suit properties is situated within the territorial jurisdiction of this Court.



17. Learned senior counsel asserts that the suit is not barred by the principle of *res judicata*, as the proceedings in the civil suit for declaration in Gurugram have no relevance to the present proceedings, and the Supreme Court, *vide* its order dated 28.04.2023, has directed that the present suit be decided independently of the same.

18. Learned senior counsel contends that the objections on the ground of limitation are also frivolous and without merit as the cause of action for seeking partition of the suit properties arose only after the demise of her brother in the year 2018, and when defendant no. 1 did not agree to the partition. The present suit was filed in the year 2020, within three years from the said date, and was therefore, according to him, not barred by limitation.

19. I have heard learned counsel for the parties and have perused the record.

Analysis

20. The Court, when deciding an application for rejection of plaint, is required to consider only the averments in the plaint and the documents relied on therein. The defence raised in the written statement and all other materials are irrelevant for the said purpose. The Supreme Court, in its judgment in ***Dahiben v. Arvindbhai Kalyanji Bhanusali***,¹ has comprehensively laid down the scope of adjudication under Order VII Rule 11. The relevant portion of the said judgment is reproduced below, for reference:

*“23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:
“11. Rejection of plaint.—The plaint shall be rejected in the following cases—*

¹(2020) 7 SCC 366



- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

(emphasis supplied)

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* [*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] 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, in the following words : (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in



an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

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.

23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

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. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be 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 [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.”

21. In the context of the aforementioned position of law, the instant application is decided.

22. The first ground on which the plaint is sought to be rejected is that it does not disclose any cause of action. The present suit is for partition. If the plaint averments, are taken to be true, and disclose a right of the plaintiff to a share in the suit property, cause of action for the present suit would be established.



23. The plaint contains specific averments to the effect that the suit properties were bought using joint family funds and funds raised by the sale of properties of the father of the plaintiff. If the said averments are proved, the plaintiff would establish a clear right over the suit properties as a co-sharer. The assertion that one of the suit properties was purchased prior to any sale of the properties of the plaintiff's father and therefore, the suit properties are not joint-family property is a defence raised by the applicant-defendants, which they have to prove by way of evidence. Therefore, the plaint clearly discloses a cause of action for the present suit, and cannot be dismissed on this ground.

24. The contention that the present suit is not maintainable insofar as the Gurugram property is concerned seems to be on a misconceived appreciation of the law. Learned counsel for the applicant defendants has placed reliance on Section 16 of the CPC in support of his submission. However, the jurisdiction of the Court in the present case is governed not by the aforesaid provision but by Section 17 of the CPC, which is reproduced below, for reference:

“17. Suits for immovable property situate within jurisdiction of different Courts.—Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.”

25. A bare perusal of the said provision indicates that suits in respect of two or more immovable properties which are situated in the jurisdictions of different Courts may be instituted in any one of them. If the submission on behalf of the applicant-defendants is to be accepted, it would lead to an



absurd situation where suits between the same parties would have to be instituted in multiple Courts within the limits of whose territorial jurisdiction the properties are situated.

26. The submission that the reliefs sought in the present suit are barred by limitation does not seem to sustain, at this stage. Learned counsel for the applicant-defendant has creatively tried to impress upon the Court that, since, admittedly, the title documents of the suit properties stand in the name of late Shri Vinay Jauhari, the plaintiff, by seeking partitioning of the said properties, is effectively seeking to challenge the said title documents. However, an examination of the case set up by the plaintiff indicates that she does not challenge the validity of the said documents at all; she merely asserts her purported rights in the suit properties which vested in her, since they were purchased using joint family funds. Therefore, the prayer for partition is what it actually is; it is not one for challenging the title documents in respect of the suit property.

27. The limitation period for the said prayer is not specifically provided for in any of the Articles in the Schedule to the Limitation Act, 1963. Therefore, it is governed by Article 113, which provides that the limitation period expires three years from the date when the right to sue accrues.

28. The cause of action for partition keeps recurring until a demand for partition by the plaintiff is refused by the defendant. Reference can be made to the decision of this Court in *S. Jaswant Singh (Deceased By L. Rs.) vs S. Darshan Singh (Deceased By L. R.) And Others.*² The relevant portion of the said decision is reproduced below, for reference:

² 1991 SCC OnLine Del 326



*“16. In the present case, the averments made by the plaintiff himself in the previous suit show that a cloud has been thrown on the right of the plaintiff to seek partition in as much as it has been set up by the defendant that oral partition of the property had taken place meaning thereby that property no longer remained joint. The right to seek partition of the property is governed by Art. 113 of the Limitation Act. In *Nanak Chand v. Chander Kishore*, AIR 1982 Delhi 520, it has been held that the joint ownership turns into possession and enjoyment in common until the physical partition takes place according to the shares standing at the date of severance of status. It is no more in doubt that a suit for such physical partition is governed by Art. 113 and such a suit is to be brought within 3 years from the time when the right to sue accrues. There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or, at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”*

Emphasis supplied

29. The plaintiff avers in her plaint that the talks for partition commenced only in the year 2018, and soon thereafter, the demand for partition was refused.
30. The limitation period for the prayer for declaration that the Gift Deed dated 16.08.2005 is void is specified in Article 58 of the Limitation Act to be three years from the date when the right to sue first accrues.
31. The plaint contains pleadings to the effect that the plaintiff became aware of the said document only upon inspection of the records in another petition instituted by the applicant-defendants in the year 2018.
32. If the plaint averments are taken to be true, it is from the said date that the limitation period of 3 years commenced, and the present suit having been instituted within three years from the said date, is within limitation.
33. The decision of this Court in ***Rajinder Kumar Kapur v. Madan Mohan Lal Kapur***³ relied on by Mr. Rajeev Kapoor does not apply to the

³2019 SCC OnLine Del 9472



present case on this aspect. In the said case, the decision rested on a document which was registered more than thirty years ago, and the Court was considering the application of Section 90 of the Evidence Act, 1872. No such document exists in the present case.

34. In light of the forgoing discussion, the Court finds that no ground for rejection of plaint under Order VII Rule 11 of the CPC is established. Accordingly, the instant application stands dismissed.

CS(OS) 4/2020, I.A. 178/2020, I.A. 11994/2023, I.A. 16122/2023 & I.A. 13163/2025

35. List this matter before the concerned Joint Registrar on 10.11.2025 for taking necessary steps in accordance with law.

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

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

SEPTEMBER 10, 2025/aks