



2025:DHC:8276



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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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CS(OS) 1175/2014, I.A. 8226/2016, I.A. 2629/2017 & I.A. 35030/2024

1. PAWAN KUMAR SHARMA
S/O LATE SHRI SHIV LAL SHARMA

R/O 4 RAM CHANDER LANE
RAM KISHORE ROAD
CIVIL LINE
DELHI- 110 054

1(i). SMT. USHA SHARMA
AGED ABOUT 58 YEARS (WIFE)

1(ii). DEEPAK SHARMA
AGED ABOUT 38 YEARS (SON)

1(iii). SMT. POOJA SHARMA
AGED ABOUT 37 YEARS (DAUGHTER)

1(iv). UTSAV SHARMA
AGED ABOUT 32 YEARS (SON)

ALL R/O 4 RAM CHANDER LANE
RAM KISHORE ROAD CIVIL LANE
DELHI- 110 054

2. SMT USHA SHARMA
W /O SHRI PAWAN KUMAR SHARMA



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R/O 4 RAM CHANDER LANE
RAM KISHORE ROAD CIVIL LANE
DELHI- 110 054

.....PLAINTIFFS

Through: Mr. S.D. Singh with Mr. K. Prasad and
Mr. Siddharth Singh, Advocates.

versus

1. OM PRAKASH SHARMA
S/O LATE SHRI SHIV LAL SHARMA
AT
i) R/O HOUSE NO. 90
AGCR ENCLAVE DELHI- 110 092
ii) 25, DEFENCE ENCLAVE
VIKAS MARG,
DELHI- 110 092

.....DEFENDANT NO. 1

2. SMT. GEETA SHARMA
W/O SHRI OM PRAKASH SHARMA
AT
i) R/O HOUSE NO. 90
AGCR ENCLAVE DELHI- 110 092
ii) 25, DEFENCE ENCLAVE
VIKAS MARG,
DELHI- 110 092

.....DEFENDANT NO. 2

3. SHRI VIKAS SHARMA
S/O SHRI OM PRAKASH SHARMA
At
i) Resident of House No. 90
AGCR ENCLAVE
Delhi 11 0 092
. ii) 25, DEFENCE ENCLAVE
VIKAS MARG
DELHI- 110 092

.....DEFENDANT NO. 3



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4. LATE SHRI ASHOK KUMAR SHARMA
SON OF LATE SHRI SHIV LAL SHARMA

4a. KUSUM SHARMA
WIDOW OF ASHOK KUMAR
SHARMA

4b. AKASH SHARMA

4c. SAGAR SHARMA

4d. SHUBHAM SHARMA

ALL R/O 25, DEFENCE ENCLAVE (1st Floor)
VIKAS MARGE
DELHI-11 0 092.

AND

98 NEW RAJDHANI ENCLAVE,
VIKAS MARG, DELHI- 110092

.....DEFENDANT NO. 4

5. SMT. KUSUM SHARMA

WIFE OF SHRI LATE ASHOK KUMAR SHARMA

R/O 25, DEFENCE ENCLAVE (1st FLOOR)

VIKAS MARGE,

DELHI- 110 092

.....DEFENDANT NO. 5

Through: Mr. Manik Dogra, Sr. Advocate with Mr.
Kapil Rustagi, Mr. Akshay Sharma, Mr.
Dev Pratap Shahi and Mr. Dhruv Pande,
Advocates for D1 to D3.

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Reserved on: 14.08.2025

Pronounced on: 15.09.2025

JUDGMENT



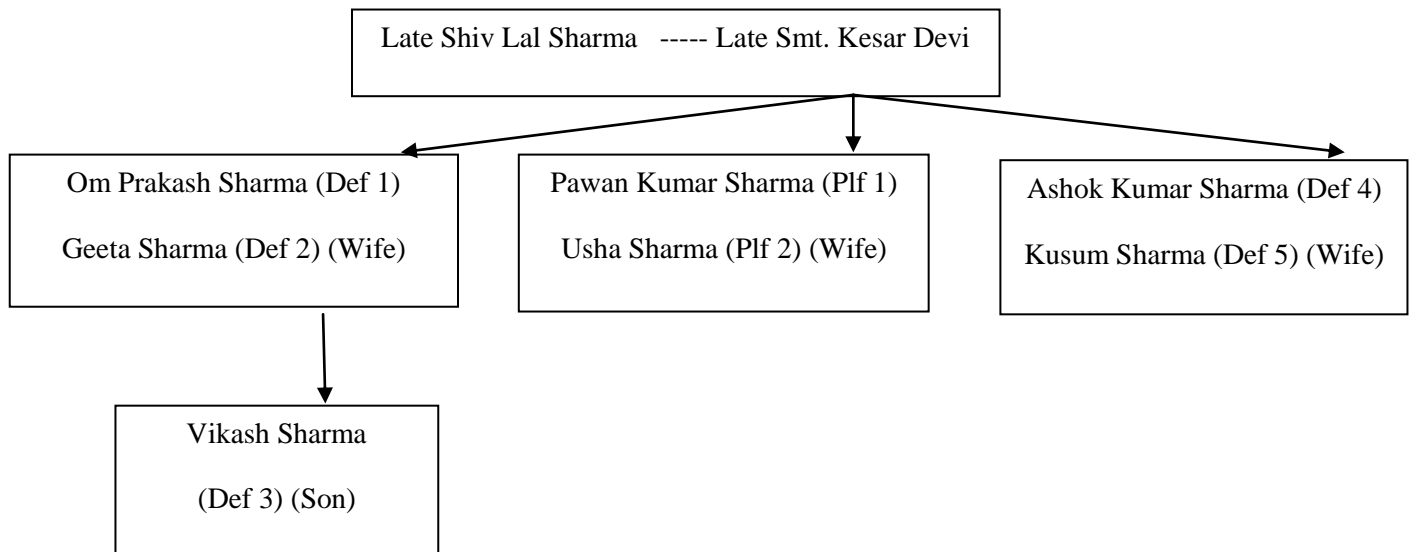
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I.A. 6656/2019 (filed on behalf of defendant no. 1 seeking rejection of plaint)

1. The instant application has been filed on behalf of defendant no.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*the CPC*) seeking rejection of the plaint.

2. The present suit has been filed seeking partition, between plaintiff no. 1, defendant no. 1 and defendant no. 4, of the alleged joint family properties belonging to the Hindu Undivided Family (*the HUF*) of late Shri Shiv Lal Sharma who expired on 27.04.1979 and late Smt. Kesar Devi, who expired on 21.02.2001. The plaintiffs claim that plaintiff no. 1 and defendants no. 1 and 4 are their only surviving legal heirs. The family tree in respect of the HUF, as per the averments in the plaint, is reproduced below, for reference:



3. The case setup by the plaintiffs is that defendant no.1, as the eldest son, acted as karta of the HUF, while plaintiff no.1 and defendant no.4 are the other



coparceners, each entitled to a one-third share in the properties of the HUF. It is the case of the plaintiff that several immovable properties, businesses, and movable assets (*the suit properties*) stand jointly in the names of plaintiff no. 1, defendant no. 1 and defendant no. 4. Further, some of the suit properties which stand in the names of defendants No.2, 3, and 5 and plaintiff no.2 are stated to have, in fact, been acquired out of HUF funds and form part of the HUF.

4. Mr. Manik Dogra, learned senior counsel for defendants no. 1 to 3 submits that the suit is liable to be dismissed at the threshold as it does not disclose any cause of action. According to him, the plaintiffs have failed to plead essential particulars regarding the creation or existence of the HUF as required under Order VI Rule 4 of the CPC; no date, year, or details of formation of the alleged HUF have been furnished, nor is there any averment that the properties were inherited prior to the Hindu Succession Act, 1956 (*HSA*). He submits that it is settled law that post-1956, no HUF can come into existence except where an individual throws his self-acquired property into the common hotchpot, which too must be specifically pleaded, and that mere allegations of joint ownership do not establish an HUF. On the strength of these submissions, he asserts that, therefore, the plaint does not disclose a valid cause of action and merits rejection under Order VII Rule 11 of the CPC.

5. Learned senior counsel further submits that the plaintiffs have pleaded that they have determinable and fixed shares in the alleged HUF properties whereas such an averment runs contrary to the very concept of coparcenary, wherein shares of members fluctuate with births and deaths in the family.



According to him, the assertion of definite shares not only undermines the plaintiffs' own pleadings but also confirms that no HUF, as alleged, exists in the present case.

6. Learned senior counsel submits that the plaintiffs have deliberately not arrayed four sisters namely Smt. Santosh Sharma, Smt. Kusum Vashishth, Smt. Renu Sharma, and Smt. Anju Vats as parties to the suit despite their being Class I heirs of Late Shri Shiv Lal Sharma, as per the Schedule to the Hindu Succession Act, 1956 (*HSA*). Reliance is placed on the decision of the Supreme Court in *Vineeta Sharma v. Rakesh Sharma*,¹ to submit that daughters have equal coparcenary rights and their non-impleadment renders the suit not maintainable.

7. Learned senior counsel further submits that the suit is also liable to dismissal for non-payment of proper court fees. He points out that the plaintiffs have valued the entire claim at a nominal Rs. 80, asserting constructive possession of the suit properties. He submits that, contrarily, the plaintiffs have simultaneously pleaded ouster with respect to certain properties. Once ouster is alleged, the benefit of fixed Court fees ceases, and payment of *ad valorem* Court fee is mandatory. According to him, the plaintiffs have clearly undervalued the suit and the same renders the plaint defective and liable to rejection.

8. Mr. S.D. Singh, learned counsel for the plaintiffs, controverts the

¹ (2020) 9 SCC 1



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submissions on behalf of defendants no. 1 to 3, and submits that the instant application is misconceived and liable to be dismissed.

9. Learned counsel for the plaintiffs submits that the plaint clearly discloses a cause of action for partition and accounts. He takes the Court through various paragraphs in the plaint, to show that the plaint contains averments to the effect that the suit properties are HUF assets or have been acquired from HUF funds have been made. He also points out that in the defendants' reply dated 22.10.2013 to the plaintiff's legal notice dated 06.09.2013, the defendants admit joint purchase of the suit properties from HUF funds, and income sharing from HUF properties. Learned counsel asserts that defendant no.1 cannot be permitted to deny his own admissions.

10. Learned counsel further submits that even if it is assumed, without prejudice, that the suit properties did not form a part of the HUF, they are still liable to be partitioned as they are jointly owned by plaintiff no. 1, defendant no. 1 and defendant no. 4.

11. Learned counsel further submits that all persons having a share in the suit properties have already been impleaded in the present suit, and that married female members are not necessary parties for the same.

12. Learned counsel further submits that the plaintiffs have properly valued the suit and affixed sufficient court fees for the reliefs prayed. He submits that the suit properties belong to the HUF, and therefore, plaintiff no. 1 is deemed to be in constructive possession of the same. He asserts that the plaint does not



disclose any ouster of plaintiff no. 1 from the said properties. Reliance is placed on the decision of the Supreme Court in *Neelavathi and Ors. v. N.Natarajan & Ors.*,² and the decision of this Court in *Smt. Chandralekha Tuli & Ors. v. Shiv Sarandas Tuli & Ors.*,³ in support of the said submission.

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

14. The controversy herein lies within a narrow compass and thus, the sole issue that arises for consideration is whether the plaint is liable to be rejected for want of cause action and being barred by law. At the outset, it is pertinent to examine the scope of the inquiry to be undertaken by the Court, while adjudicating an application under Order VII Rule 11 of the CPC. The Supreme Court, in its decision in *Dahiben v. Arvinbhai Bhanusali and Others*,⁴ has examined the law on the said provision and held as under:

“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—

- (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;*

² (1980) 2 SCC 247

³ 75 (1998) DLT 909

⁴ (2020) 7 SCC 366



- (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.”

15. To recapitulate, the remedy contemplated in Order VII Rule 11 of CPC is born out of the sacred notion that the stream of justice must be kept unpolluted and aloof from vexatious, frivolous and abusive litigation. It is intended to weed out cases whose fate is pre-determined owing to the absence of cause of action or legal bar. However, the very fact that this remedy becomes available at the very threshold of a suit proceeding, is what makes it incumbent upon the Court to adopt a cautionary approach. The underlying principle that must be kept in mind is that the plaint in question must be considered as a whole and must not be dissected to perceive it selectively. Having said that, nothing beyond the plaint is to be considered at this stage and the possible defences or counter-versions have no place in the zone of consideration. It is equally essential that the nature of inquiry in an Order VII Rule 11 application is summary and thus, triable or fact intensive issues must



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not be adjudicated at this stage. In the context of the aforesaid position of law, the facts relevant to the present application are appreciated.

16. The primary ground on which the plaint is sought to be rejected, is that the same does not disclose any cause of action. It is the case of the applicant-defendants that there does not exist any HUF as claimed by the plaintiff, and that the same is clear from the absence of material particulars in respect of the HUF in the plaint.

17. A perusal of the plaint indicates that the plaintiff has, indeed, not stated specific particulars in respect of the HUF, such as the date of its commencement, details of formation, etc. However, the same is not fatal to the suit as the only objective of this assertion is to show that the suit properties are joint in nature and are liable to be partitioned. Pertinently, an indication towards the joint nature of the suit properties originates from other material on record. As rightly pointed out by learned counsel for the plaintiffs, documents filed along with the plaint, more specifically, Lease deed dated 10.01.1980, Conveyance Deed dated 18.03.1993, Partnership Deed dated 27.03.1991, and the reply of the defendants dated 22.10.2013 to the legal notice issued by the plaintiffs indicate that some of the suit properties are jointly owned by plaintiff no. 1, and defendants no. 1 and 4. Therefore, even if the suit properties are deemed not to be properties of the HUF owing to the absence of particulars in the plaint, they could still be subjected to partition between the co-owners, if they are jointly owned. Thus, the foundational facts necessary for claiming relief from the Court are not absent in the plaint and cause of action is



apparent.

18. In light of the documents mentioned above and the claims raised by the parties herein, the question whether the suit properties are actually, jointly owned by plaintiff no. 1 and defendants no. 1 and 4, are questions of fact, and can be adjudicated, only after the parties are allowed to lead evidence. In a proceeding of the present kind, it is not permissible to summarily adjudicate the effect of contested documents and to outrightly reject a potential claim.

19. The next objection to maintainability of the suit has been raised on the ground that the sisters of plaintiff no. 1 and defendants no. 1 and 4 have not been arrayed as parties. In the considered opinion of this Court, the same cannot be a ground for rejection of the plaint, since The plaint contains averments that plaintiff no.1 and defendants no. 1 and 4 are the only legal heirs of late Shri Shiv Lal Sharma and late Smt. Kesar Devi. The relevant paragraph of the plaint is extracted below, for reference:

“03. After the demise of Late Shri Shiv Lai Shanna who expired on 27.04.1979, Defendant No.1 who is eldest of his sons, has all along acted as the Karta of the Hindu Undivided Family (HUF) of which Plaintiff No.1 and Defendant No.4 are coparceners. Late Shri Shiv Lai Sharma and Smt Kesar Devi did not have any other issue, and hence on partition of the properties and assets of the HUF, Plaintiff No.1 along with Defendants No.1 and 4 are entitled to equal shares therein.”

20. As noted above, the plaint cannot be rejected on the basis of the existence of counter facts, if any, and the plaint is to be considered on its independent footing for the purpose of its rejection. In light of this settled proposition, the plaint cannot be rejected for non-impleadment of other



purported co-sharers. Needless to observe, the defendants may raise the said objection at an appropriate stage.

21. The final ground raised by the defendants is that the plaintiff has not paid sufficient court fees. It is settled law that in case of jointly owned properties, there exists a presumption of constructive possession of all co-owners, if even one of them is in possession of the property. Reliance may be placed on the decision of this Court in ***Shri Atma Singh & Anr vs Shri Prem Singh & Ors.***⁵

“21. The general principle of law is that in the case of co- owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession otherwise allegations of the plaint are to be taken into consideration. The court is not required to examine the truthfulness of the said allegation.”

22. The said decision is in line with the decision of the Supreme Court relied on by learned counsel for the plaintiffs in ***Neelavathi v. N. Natarajan.***⁶ The relevant portion of the said decision is extracted below, for reference:

“8.The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not

⁵ 2022:DHC:3210

⁶ (1980) 2 SCC 247



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disputed the law presumes that he is in joint possession unless he is excluded from such possession.”

23. Therefore, in light of the averment of joint ownership, plaintiff no. 1 will be deemed to be in constructive possession of the suit property, until and unless his ouster therefrom by the other co-sharers is established. According to learned senior counsel on behalf of the applicant-defendants, the plaintiffs have admitted to being ousted from some of the suit properties in the plaint. However, a perusal of the plaint does not disclose any such admission by the plaintiffs. Therefore, in the absence of any evidence of ouster of plaintiff no. 1 from the suit properties, he is deemed to be in constructive possession of the same. Therefore, the Court fees paid on the plaint does not seem to be insufficient. However, the defendants are at liberty to lead evidence on this aspect if any. In the present set of circumstances, it may also be noted, before parting, that even if different suit properties bear different character, joint or otherwise, it would not make much difference insofar as the present application is concerned, as the plaint cannot be rejected partially. Either it must be rejected as a whole or not at all.

24. In view of the foregoing discussion, the Court finds that the instant application is without merit and does not make out any ground for rejection of plaint. Accordingly, the same is dismissed.

CS(OS) 1175/2014, I.A. 8226/2016, I.A. 2629/2017 & I.A. 35030/2024

1. List this matter along with the pending applications before the concerned



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Joint Registrar on 10.11.2025 for taking necessary steps in accordance with law.

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

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 15, 2025