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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 936/2024 and I.A. 46333/2024**

Between: -

AMIT SETHI
S/O SH. LALIT SETHI
R/O C-76, AB, KALKAJI,
NEW DELHI-110019

.... PLAINTIFF

(Through: Ms. Rekha Saroha, Mr. Mohit Saroha, Advocates.)

AND

1. SH. LALIT SETHI
S/O LATE RAM LAL SETHI

2**. SH. SAMEER SETHI**
S/O SH. LALIT SETHI

3. **SMT. SANTOSH SETHI**
W/O LATE KULBHUSHAN SETHI

4. **SH. SUMIT SETHI**
S/O LATE KULBHUSHAN SETHI

ALL RESIDENTS OF:-
C-76, AB, KALKAJI, NEW DELHI-110019

....DEFENDANTS

(Through: Mr. Sumit R. Sharma, Mr.Harshit and Mr.Sagar Agarwal, Advocates for D-1 & D2., Mr. Ranjan Mukherjee, Advocate for D-3 and 4)

% Reserved on: 28.08.2025
Pronounced on: 15.09.2025

JUDGMENT

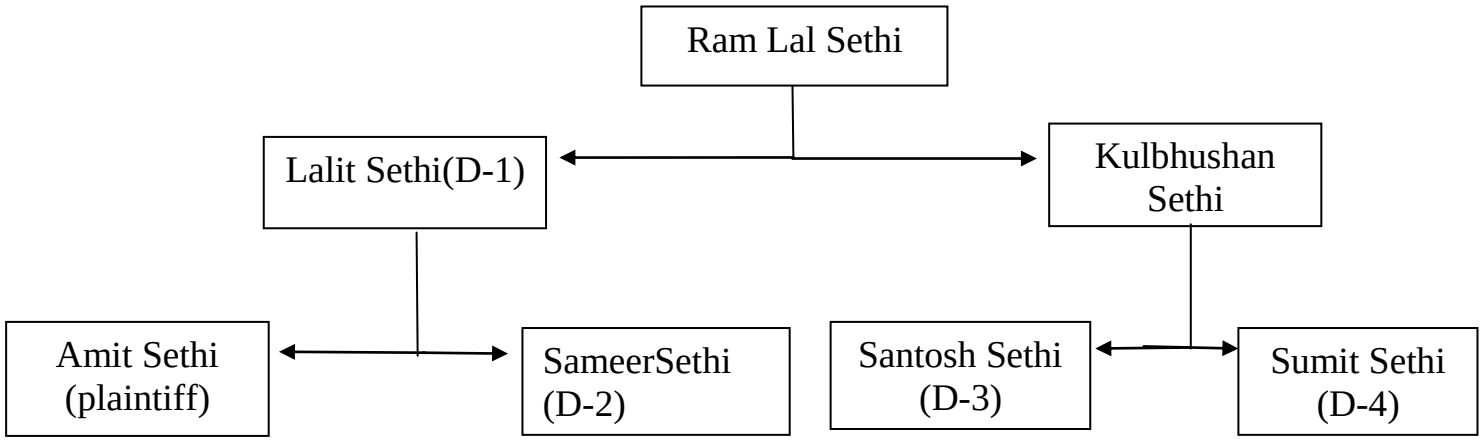
I.A. 2205/2025 (under Order VII Rule 11 of CPC)

The instant application is filed by defendants nos.1 and 2 for rejection of the present suit under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC')* for being devoid of any cause of action and for failure to disclose the necessary facts.

Factual Matrix

2. The present suit is one for partition, wherein the plaintiff seeks a declaration that he is the absolute owner of his 1/5th share in property bearing No. C-76, AB, Kalkaji, New Delhi, measuring 200 sq. yds. (*hereinafter referred to as the "suit property"*), along with other consequential reliefs.

3. A pedigree chart describing the relation of the parties in the instant *lis* is given as under: -



4. Therefore, it is seen that the parties to the instant suit are all legal heirs of the Sh. Ram Lal Sethi. The plaintiff and defendant no.2 are brothers and children of defendant no.1. Defendant nos.3 and 4 are cousin brothers of the plaintiff and defendant no. 2. The said defendants are the sons of late Sh. Kulbhushan Sethi, i.e., brother of defendant No.1 and the elder son of late Sh. Ram Lal Sethi.

5. The facts on record indicate that late Sh. Ram Lal Sethi, expired on 07.12.1989, and late Sh. Kulbhushan Sethi, passed away on 08.12.2010. The suit property was originally acquired by late Sh. Ram Lal Sethi by virtue of a perpetual lease deed dated 31.08.1965.

6. It is the case of the plaintiff that in the year 1986, the late Sh. Ram Lal Sethi effected an oral partition amongst all his legal heirs, under which the suit property devolved upon his father, defendant no.1, and his uncle, late Sh. Kulbhushan Sethi. The plaintiff asserts that upon the demise of his grandfather, he became the absolute owner of his share in the suit property, being the grandson of the late Sh. Ram Lal Sethi.

7. The plaintiff further contends that the suit property constitutes a Joint Hindu Family property, and therefore, both the plaintiff and the defendants hold proportionate, undivided, and impartible ownership rights therein. According to him, despite repeated requests for partition of the property by metes and bounds, the same has not been carried out, and instead, defendant no.1 has gone to the extent of lodging false complaints against him.

8. Several other submissions have been urged, but for the purpose of deciding the present application, they are of no relevance and need not be adverted to at this stage.

9. Mr. Sumit R. Sharma, learned counsel appearing on behalf of the applicants,essentially assails the instant suit for being(i) devoid of cause of action; and (ii) barred by law.

10. Learned counsel contends that, as per the plaintiff's own showing, a partition had already taken place in 1986, whereby defendant no.1 and his brother, late Sh. Kulbhushan Sethi, became the owners of 50% share each. Thus, according to Mr. Sharma, defendant no.1 and late Sh. Kulbhushan Sethi, acquired absolute ownership rights, rendering the suit property as self-acquired in their hands.

11. He further urges that the plaintiff cannot seek partition of his father's self-acquired property. Reliance is placed on the decision of this Court in ***Birbal Saini v. Satyawati***[1].

12. The aforesaid submissions are vehemently opposed by Ms. Rekha Saroha, learned counsel for the plaintiff, who avers that the plaint clearly discloses a cause of action. She further avers that at this stage, the defence set up by the defendants cannot be looked into, and therefore, the suit is maintainable, while the present application deserves to be dismissed.

13. I have heard learned counsel appearing on behalf of the parties and also perused the record.

[1]2024 SCC OnLine Del 9276

14. The law with respect to the stringent rigors of Order VII Rule 11 of CPC is no longer *res integra*. The rule is intended to act as a safeguard against vexatious litigation by preventing claims that do not disclose a cause of action or are otherwise barred by law from proceeding to trial. The rule mandates that the Court must examine the averments in the plaint as they stand and determine whether the suit is maintainable, without delving into the merits of the case or the defence raised by the defendant.

15. In ***T. Arivandandam v. T.V. Satyapal***[2], the Supreme Court held that the Courts should "nip in the bud" the cases that are manifestly meritless or legally untenable. Similarly, in ***Dahiben v. Arvindbhai Kalyanji Bhanusali***[3], the Supreme Court held that clever drafting cannot circumvent statutory bars, and a plaint that appears meritless on its face must be struck down without subjecting the defendant to prolonged litigation. The Supreme Court reiterated the aforesaid principles in ***Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle***[4], emphasizing the responsibility upon the Courts to deter vexatious or frivolous claims at the threshold to preserve judicial economy and uphold the integrity of judicial proceedings.

16. This Court in ***Harmanpreet Kaur Dhir v. Pritam Singh Bhatia and Ors***[5], emphasised that the exercise of jurisdiction under Order VII Rule 11 of CPC results in the summary termination of proceedings without granting the plaintiff an opportunity to establish their claim through evidence. This

[2](1977) 4 SCC 467
[3] (2020) 7 SCC 366
[4](2024) SCC OnLine SC 3844
[5](2025) SCC OnLine Del 1716

extraordinary power is to be invoked sparingly and with caution, and only in cases where it is manifestly clear from the averments in the plaint that either no cause of action is disclosed, or that the suit is clearly barred by law.

17. Thus, provision under Order VII Rule 11(a) of the CPC mandates that the Court can, and must, reject a plaint where it does not disclose a cause of action. Therefore, the short question that arises for consideration in the present application is whether the plaint discloses a cause of action.

18. The entire case of the plaintiff appears to be premised on the assumption that the suit property is his ancestral property, wherein lies his vested right. The said basis has been countered by the applicants/defendants herein by asserting that the partition had already taken place and the property fell in the hands of the plaintiff's father as his self-acquired property. Thus, an examination of the governing law in this regard is necessitated.

19. Under the Mitakshara School of Hindu law, prior to the enactment of the Hindu Succession Act, 1956 (*hereinafter referred to as 'the HSA'*), property inherited by a person from his father, grandfather, or great-grandfather would be regarded as ancestral property, thereby conferring upon his son a right to share in the same from the moment of his birth. In ***Surjit Lal Chhabda v. CIT***[6], it was observed that any property inherited by a male Hindu from his father, father's father, or father's father's father would be ancestral property, not absolute property, but rather coparcenary property in which the male descendant inherited as a member of the coparcenary and

[6] (1976) 3 SCC 142

not in his individual right.

20. However, the enactment of the HSA brought about a drastic change in the law relating to intestate succession among Hindus in India. By virtue of Section 4 of the HSA, any text, rule, or interpretation of Hindu law, in respect of which provision is made in the Act, ceased to have effect. Section 8 of the HSA laid down the rules of succession in respect of the property of a male Hindu dying intestate, whereby the property of such a person devolves, firstly upon the heirs specified in Class I of the Schedule, to the exclusion of all other persons. The list of Class I heirs includes the son, daughter, widow, mother, and certain descendants of predeceased children, but it is pertinent to note that grandchildren, who are not children of a predeceased child, are not included in this category.

21. In ***Commissioner of Wealth Tax, Kanpur vs Chander Sen,***[7] the Supreme Court held that under Section 8 of the HSA, the property of a Hindu male dying intestate devolves on his son in his individual capacity and not as the Karta of his Hindu Undivided Family (HUF). Section 8 provides a self-contained scheme of succession, wherein Class I heirs inherit simultaneously to the exclusion of all others. Since a son's son is not included as a Class I heir, he does not acquire any right in his grandfather's property by birth, a right that earlier existed under traditional Hindu law. The HSA, being a codifying statute, expressly overrides pre-existing Hindu law as per Section 4, and succession must be determined strictly in accordance with its provisions. Thus, the property devolving upon a son under Section 8 is his absolute property, and his own sons acquire no

[7] 1986 (3) SCC 567

birthright in it**.** The relevant extract of the aforesaid decision reads as under:-

> *"2.1 Under s. 8 of the Hindu Succession Act, 1956, the property of the father who dies intestate devolves on his son in hisindividual capacity and not as Karta of his own family. Section 8 lays down the scheme of succession to the property of a Hindu dying intestate. The Schedule classified the heirs on whom such property should devolve. Those specified in class I took simultaneously to the exclusion of all other heirs. A son's son was not mentioned as an heir under class I of the Schedule, and, therefore, he could not get any right in the property of his grandfather under the provision.*
>
> *2.2 The right ofa son'sson in his grandfather's property during the lifetime of his father which existed under the Hindu law as in force before the Act, was not saved expressly by the Act, and therefore, the earlier interpretation of Hindu law giving a right by birth in such property "ceased to have effect". So construed, s. 8 of the Act should be taken as a self-contained provision laying down the scheme of devolution of the property of a Hindu dying intestate. Therefore, the property which devolved on a Hindu on the death of his father intestate after the coming into force of the Hindu Succession Act, 1356, did not constitute HUF property consisting of his own branch including his sons.*
>
> *2.3 The Preamble to the Act states that it was an Act to amend and codify the law relating to intestate succession among Hindus. Therefore, it is not possible when the Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased-son, to say that when son inherits the property in the situation contemplated by s. 8, he takes it as Karta of his own undivided family.*
>
> *2.4 The Act makes it clear by s. 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today that the property which devolved on a Hindu under s. X of the Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis sons and female heirs with respect to whom no such concept could be applied or contemplated.*
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> *2.5* ***Underthe Hindu law, the property of a male Hindu devolved on his death on his sons and the grandsons as the grandsons also have an interest in the property. However, by reason of s. 8 of the Act, the son's son gets excluded and the son alone inherits the properly to the exclusion of his son****. As the effect of s. 8 was directly derogatory of the law established according to Hindu law, the statutory provisions must prevail in view of the unequivocal intention in the statute itself,*

expressed in s. 4(1) which says that to the extent to which provisions have been made in the Act, those provisions shall override the established provisions in the texts of Hindu Law.

2.6 The intention to depart from the pre-existing Hindu law was again made clear by s. 19 of the Hindu Succession Act which stated that if twoor more heirs succeed together to the property of an intestate, theyshould take the property as tenants-in-common and not as joint tenants and according to the Hindu law as obtained prior to Hindu Succession Act two or more sons succeedingto their father's property took a joint tenants and not tenants-in-common. ***The Act, however, has chosento provide expressly that they should take as tenants-in-common. Accordingly the property which devolved upon heirs mentioned in class I of the Schedule under s. 8 constituted the absolute properties and his sons have no right by birth in such properties."***

22. The Supreme Court in ***Yudhister v. Ashok Kumar***[8], following its earlier decision in ***Chander Sen***, held that property inherited by a person under Section 8 of the HSA, devolves upon him in his individual capacity and not as *karta* of his family. The Court explained that, under the pre-HSA position, a son would automatically acquire a right in the property inherited by his father from his ancestors. However, this position was altered by the HSA. After 1956, when a son inherits property in the situation contemplated by Section 8 of HSA, he does so as his individual property and not as part of the coparcenary.

23. In ***Birbal Saini***, also relying on the decision of the Supreme Court in ***Chander Sen,*** this Court held that a son does not acquire rights by birth in property inherited by his father under Section 8 of the HSA.

24. Recently, this Court in ***Kritika Jain v Rakesh Jain & Anr***,[9] on an appreciation of the provision under Section 8 of the HSA and the aforenoted decisions, concluded that the share of defendant no. 1 therein in the suit

[8]1987 (1) SCC 204
[9]2025: DHC: 7991

property was his absolute property, and the plaintiff therein, being his daughter, did not acquire any right in the same. The relevant extract of the aforesaid decision reads as under: -

> "*Under the Mitakshara school of Hindu law, prior to the enactment of the HSA, property inherited by a person from his father, father's father, or father's father's father would be ancestral property in his hands and thus, a right to a share in the same would vest in his son, the moment he is born. Reference can be made to the decision of the Supreme Court in Trijugi Narain v. Sankoo1, the relevant part of which reads thus:*
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> *"8. In order to decide the question, we must first notice the difference between the joint Hindu family and coparcenary. Coparcenary, as observed in Surjit Lal Chhabda v. CIT [Surjit Lal Chhabda v. CIT, (1976) 3 SCC 142 : 1976 SCC (Tax) 252] , is a narrower body than the joint Hindu family. Under the Mitakshara Hindu Law, any property inherited by a male Hindu from his father, father's father or father's father's father is ancestral property. The male descendant who inherits the property in the above manner did not inherit the property absolutely as a separate property, but as coparcenary property."*
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> *13. However, the enactment of the HSA brought about a drastic change in the law relating to intestate succession amongst Hindus in India. By virtue of Section 4 of the HSA, any text, rule, or interpretation of Hindu law, in respect of which provision was made in the HSA, ceased to have effect. Section 8 of the HSA, contains certain rules of succession in respect of the property of a male Hindu dying intestate. The said provision is reproduced below, for reference:"8. General rules of succession in the case of males.—Theproperty of a male Hindu dying intestate shall devolve according tothe provisions of this Chapter:—(a) firstly, upon the heirs, being the relatives specified in class I ofthe Schedule;(b) secondly, if there is no heir of class I, then upon the heirs, beingthe relatives specified in class II of the Schedule;(c) thirdly, if there is no heir of any of the two classes, then uponthe agnates of the deceased; and(d) lastly, if there is no agnate, then upon the cognates of thedeceased."*
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> *14. A perusal of the said provision indicates that in case a male Hindu dies intestate, leaving behind relatives/heirs specified in Class Iof the Schedule to the HSA, his property shall devolve on the said relatives/heirs to the exclusion of all other persons. The Class I heirs*

specified in the Schedule are as follows:"

Son; daughter; widow; mother; son of a pre-deceased son;daughter of a pre-deceased son; son of a pre-deceased daughter;daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son."

15. It is pertinent to note that grandchildren, who are not children of a predeceased child, are not included in the list of Class-I heirs. Therefore, if Section 8 is correctly appreciated, the suit property cannot be deemed to have devolved on the plaintiff upon the death of her paternal grandfather, her father being alive at the time of death of the grandfather. The suit property devolved solely on the defendants and their mother. "

25. Thus, it is trite that under the traditional Hindu Law, a male Hindu by virtue of his birth is vested with a right in any property inherited by his father. However, by reason of Section 8 of HSA, the grandson gets excluded, and the son alone inherits the property to the exclusion of his son. Therefore, by operation of provisions under Section 8 of HSA, the property of the father who dies intestate devolves on his son in his individual capacity and not as *Karta* of his own family.

26. Therefore, so long as the father is alive, the son cannot claim any right in his father's property, since Section 8 of HSA excludes the concept of survivorship or birthright in the case of intestate succession. A cause of action in favour of the son would arise only upon the father's death, intestate, when succession actually opens under Section 8 of HSA.

27. On the anvil of the aforesaid legal position, the averment made in the plaint is to be examined.

28. Paragraph nos. 4 to 8 of the plaint would clearly state that the partition had taken place in the year 1986, and defendant no.1 acquired 50% share over the suit property. The aforesaid paragraphs are reproduced as under:-

> *"4. That it is submitted that in the year 1986 Late Sh.Ram Lal Sethi had done an oral partition amongst hisall legal heirs mentioned above and by virtue of theoral partition the suit property fell in the share of Sh.Lalit Sethi (defendant no. 1) and Late Sh. Kulbhushan Sethi jointly and the property bearing no. C-3, G.K.Enclave-II, Delhi-110048 ad-measuring 400 Sq. Yds. fell in the share of the other four sons of Late Sh. RamLal Sethi namely Sh. Kulbeer Sethi, Sh. Kulratan Sethi, Sh. Inder Mohan Sethi and Sh. Chander Mohan Sethi. It is pertinent to mention herein that two daughters of Late Sh. Ram Lal Sethi namely Smt. Shashi Sarna and Smt. Anita Kohli did not get anyshare in the said properties by virtue of the said partition.*
>
> *5. That it is further submitted that during the oralpartition it was settled between Sh. Ram Lal Sethi andall his legal heirs mentioned above that Smt. ShashiSarna, Sh. Kulbeer Sethi, Sh. Kulratan Sethi, Sh.Inder Mohan Sethi, Smt. Anita Kohli and Sh. ChanderMohan Sethi shall not have any right, title or interestin the suit property in any manner and none of them shall claim any right in the suit property after thedemise of Late Sh. Ram Lal Sethi.*
>
> *6. That it is submitted that by virtue of oral partition Sh.Kulbeer Sethi, Sh. Kulratan Sethi, Sh. Inder Mohan Sethi and Sh. Chander Mohan Sethi became theabsolute owners in equal shares in property bearingno. C-3, G.K. Enclave-II, Delhi-110048 ad-measuring400 Sq. Yds. It is pertinent to mention herein that the said property had already been sold by the aforesaidfour sons of Late Sh. Ram Lal Sethi and the saleproceeds thereof had been equally distributed amongstthemselves.*
>
> *7. That after the demise of Sh. Ram Lal Sethi on 07.12.1989, the plaintiff herein became the absoluteowner in respect of hisrespective share in the suitproperty being the grandson of Late Sh. Ram Lal Sethi.It is pertinent to mention herein the plaintiff hereinwas born on 09.08.1981 and the in the manner asstated above it is manifestly clear that the suitproperty belongs to Joint Hindu Family comprising ofthe plaintiff and the defendants. That the plaintiff anddefendants have proportionate, undivided, indivisible and impartible ownership right in the suit property.That the plaintiff and the defendants comprises of a*

Joint Hindu Family unit of the simplest lineage andeach of them enjoys the status of jointtenant/coparcener/co-owner in the Joint HinduFamily property (suit property) which is ancestral andowned and possessed by the Joint Family. It ispertinent to mention herein that all the parties hereinare in joint possession in the suit property and the suitproperty had never been partitioned by metes andbounds."

29. Upon perusal of the aforesaid, it is clear that in paragraph no. 4, it is pleaded that an oral partition took place in 1986 amongst the heirs of late Sh. Ram Lal Sethi, whereby the suit property fell in the share of defendant no.1 and Late Sh. Kulbhushan Sethi jointly, while another property, C-3, G.K. Enclave-II, measuring 400 sq. yds., fell to the share of the other four sons. Furthermore, in paragraph no. 5, it is further averred that under the oral partition, the daughters and the four sons had no right, title, or interest in the suit property. Thus, as per the plaintiff's own averments upon such partition, defendant no.1 and late Sh. Kulbhushan Sethi became the absolute owners of the suit property. Consequently, the suit property in the hands of defendant no.1 is his separate/self-acquired property, as disclosed by the averments made in the plaint.

30. However, in paragraph no. 7, the plaintiff asserts that after the demise of late Sh. Ram Lal Sethi in 1989, he, being the grandson, became the absolute owner of his share in the suit property by virtue of birth, and further claims that the property belongs to a Joint Hindu Family in which he is a coparcener. The aforesaid claim is wholly perverse and untenable as per the legal position noted hereinabove. When Sh. Ram Lal Sethi died intestate, his property devolved upon his sons in their individual capacity and not as coparcenary property as per the operation of Section 8 of HSA. The plaintiff, being a grandson whose father was alive at the time of his

grandfather's death, had no birthright in the property. The plaintiff's plea that rights accrued to him by birth in 1981 is directly contrary to the settled legal position noted hereinabove.

31. Thus, the plaint discloses that the plaintiff's father, defendant no.1, is alive. It also unequivocally discloses that his father acquired the property by way of a partition that took place in 1986, which fell in his hands as his self-acquired property. Admittedly, the plaintiff does not fall in any of the categories of Class I heirs of Late Sh. Ram Lal Sethi as prescribed under Section 8 of HSA, and the inheritance rights through his father/defendant no. 1 have not opened up as he is very much alive. There is no question of intestate succession at this stage. Therefore, the plaintiff has no existing, enforceable right to seek partition or claim ownership in respect of the suit property. The plaintiff's alleged 1/5th share is a mere assumption based on pre-1956 notions of coparcenary, which stand abrogated by Section 8 of the HSA.

32. Thus, on a comprehensive reading of the plaint as a whole, it could be observed that the plaintiff's claim *qua* his entitlement to partition and declaration of ownership, is illusory and devoid of cause of action. The foundational facts to claim relief from the Court are non-existent, which is the basic test of a cause of action.

33. At best, the plaintiff's right, if any, would arise only upon the demise of his father, and even then, only in accordance with the statutory scheme of succession under HSA.

34. In light of the above discussion, it is manifest that the plaint discloses

no subsisting cause of action.

35. Accordingly, the instant application stands allowed and disposed of.

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36. Under the aforesaid circumstances, the Court finds that there arises no cause of action.

37. Accordingly, the instant plaint stands rejected along with all pending application(s).No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 15, 2025
Nc