



2025:DHC:4266



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **CS(OS) 335/2021, I.A. 8811/2021, I.A. 12160/2021, I.A. 12161/2021, I.A. 22127/2022, I.A. 2942/2023**

DIVYANSHU NANDWANI

S/O SH. KAMAL KISHORE NANDWANI

R/O 2219, RAJA PARK,

RANI BAGH, DELHI-110034

.... PLAINTIFF

(Through: Mr. Yatendra Sharma, Mr. Ankit Shah and Mr. Tarun Arora, Advs..)

Versus

KAMAL KISHORE NANDWANI

S/O LATE SH. HARICHAND NANDWANI

R/O H.NO.-3411, MOHINDRA PARK, RANI BAGH,

DELHI-110034

....DEFENDANT NO.1

SMT. SUNITA

D/O LATE SH. HARICHAND NANDWANI

R/O FLATNO.-A-1/2 VARUN APARTMENTS

SECTOR-9, ROHINI, DELHI-110085

....DEFENDANT NO.2

ANUSHKA NANDWANI

D/O KAMAL KISHORE NANDWANI

R/O 2219, RAJA PARK, RANI BAGH

DELHI-110034

(THROUGH NATURAL GUARDIAN

MRS. PRITI ARYA NANDA WANI (MOTHER)DEFENDANT NO.3

(Through: Mr. Ankur Mahindro, Ms. Divya Mishra and Mr. Raghav Kalra, Advocates.)



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Reserved on: 25.04.2025

Pronounced on: 19.05.2025

JUDGMENT

I.A. 13564/2021 (filed on behalf of defendant No.2 under Order VII Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908)

The instant application preferred by the defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as CPC*) seeks rejection of the plaint on the grounds of absence of cause of action and the suit being barred by law.

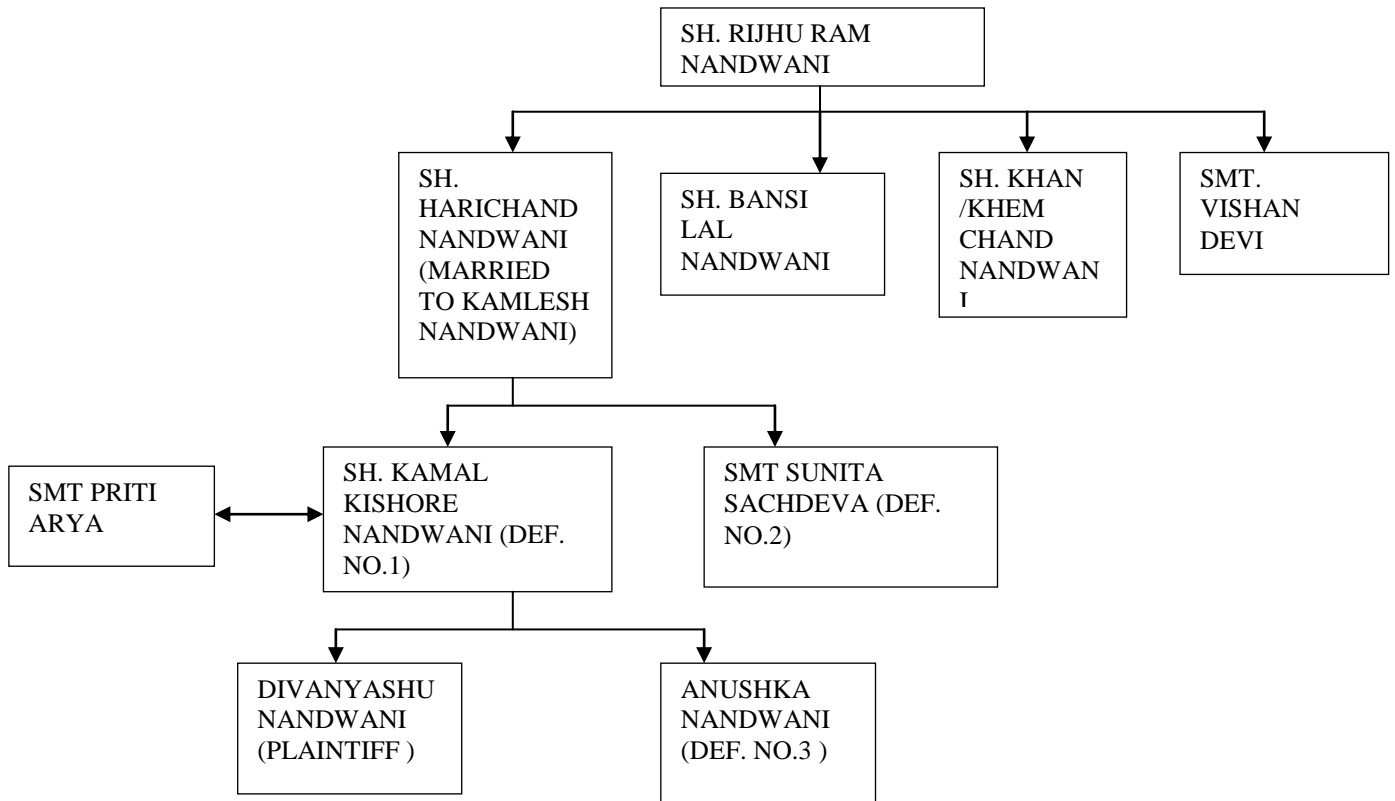
2. The plaintiff by way of the instant suit has sought for the relief of partition, permanent injunction restraining defendant nos. 1 and 2 from creating third-party interests or dispossessing the plaintiff, and for declaration that a Release Deed dated 19.02.2021 and a Will dated 23.07.2018 are null and *void*, with respect to three properties: -

- i) Property No. 2219, Raja Park, Rani Bagh;
- ii) Property No. 3104, Mahindra Park, Rani Bagh;
- iii) Property No. 3412 and 3412-A, Mahindra Park, Rani Bagh.

3. The plaintiff, namely, Divyanshu Nandwani, is the son of defendant no.1, Kamal Kishore Nandwani, and the elder brother of defendant no.3, Anushka Nandwani. Defendant no.2, namely, Sunita Sachdeva, is the sister of defendant no.1 and the paternal aunt of the



plaintiff. The pedigree chart below explains the description and lineage of parties: -



4. As per the plaint, Late Sh. Rijhu Ram Nandwani had purchased Property (ii) on 12.05.1960. Upon his demise on 26.06.1983, it is stated that a Relinquishment Deed dated 04.06.1984 was executed by his younger son and daughter, namely, Sh. Khem Chand Nandwani and Smt. Vishan Devi, in favour of their elder brothers, Sh. Hari Chand Nandwani and Sh. Bansi Lal Nandwani. It is further averred that thereafter, on 02.09.1986, a Partition Deed was executed between Sh. Hari Chand and Sh. Bansi Lal partitioning Property (ii) among themselves.

5. It is further stated that on 01.12.1995, Smt. Priti Arya was married to defendant no. 1, and the plaintiff was born out of this wedlock on



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18.12.1996. Subsequently, on 18.06.1998, Property (i) was purchased jointly by the paternal grandparents of the plaintiff, Late Sh. Hari Chand Nandwani and Smt. Kamlesh Nandwani, through a registered sale deed. It is further pleaded that defendant no. 3, the younger sister of the plaintiff, was born on 20.10.2005. Thereafter, on or around 01.01.2008, the plaintiff, along with his parents and minor sister, shifted to Property (i), which has continued to be the family home since then.

6. It is also alleged that on 28.01.2021, defendant no. 1 surreptitiously shifted his ailing father, Late Sh. Hari Chand Nandwani, to the residence of his aunt at Property (iii) without informing the plaintiff or his mother. It is further alleged that on 08.02.2021, a local property dealer named Manoj came to Property (i) along with certain prospective buyers and allegedly threatened the plaintiff and pressurised him to vacate the said premises. As a result of the said threat, on 10.02.2021, Smt. Priti Arya instituted a civil suit for permanent injunction before the Court of Civil Judge, Rohini Courts. It is further pleaded that on 18.02.2021, defendant no. 1 executed a Relinquishment Deed in favour of one Smt. Sunita Sachdeva with respect to Property (i). In view of the submissions of the plaintiff therein and the urgency of the matter, the Court was pleased to grant an ad-interim injunction on 24.02.2021 restraining the defendants from dispossessing Smt. Priti Arya without due process of law.

7. Therefore, the plaintiff has filed the present suit for partition, permanent injunction and declaration.



Submissions

8. Mr. Ankur Mahindro, learned counsel for defendant nos. 1 and 2 at the outset, submitted that the entire suit is premised on the incorrect assumption that the suit properties are ancestral or a part of the Hindu Undivided family (*hereinafter referred to as HUF*). Learned counsel also contended that the plaintiff has failed to demonstrate that any of the suit properties are ancestral in nature. It is submitted that, as per the averments in the plaint itself, there is no material on record to suggest that the properties constituted a joint family or coparcenary property, or that any HUF ever existed. In the absence of any documentary evidence or material particulars to that effect, the claim of the plaintiff to a share in the suit properties is wholly untenable.

9. It is further submitted that Property (i) was admittedly purchased by the parents of defendant nos. 1 and 2 via a registered Sale Deed dated 18.06.1998. It is also submitted that the plaintiff himself acknowledges in paragraph no. 8 of the plaint that Property (i) was the self-acquired property of the said parents. Accordingly, upon their demise, the said property devolved solely upon defendant Nos. 1 and 2 in accordance with the provisions of the Hindu Succession Act, 1956 (*hereinafter the Act of 1956*). Therefore, according to Mr. Mahindro, since defendant No. 1 is alive, it is impermissible for the plaintiff to assert any right, title, or interest during his lifetime.

10. With regard to Property (ii), learned counsel submitted that the



said property was originally acquired by Sh. Rijhu Ram Nandwani. After his death, the plaintiff has admitted in the plaint that the property devolved upon his legal heirs, i.e, Sh. Hari Chand Nandwani, Sh. Bansi Lal, Sh. Khan Chand, and Smt. Vishan Devi. It is also submitted that it is an admitted position in the plaint that Sh. Khan Chand and Smt. Vishan Devi executed a Relinquishment Deed in favour of Sh. Hari Chand Nandwani and Sh. Bansi Lal. Mr. Mahindro also submits that the plaint also states that the said property was subject to a registered partition Deed dated 02.09.1986. Therefore, according to the learned counsel, in light of the aforementioned admitted facts, Property (ii) ceased to retain any joint family character and became the self-acquired property of the parties to the partition.

11. Learned counsel further submitted that Property (iii) was owned by the maternal grandparents of defendant No.1 and devolved upon Sh. Hari Chand Nandwani and Smt. Saroj Rajpal. It is also submitted that the aforesaid fact has been pleaded in the plaint in Paragraph no. 12. Further, it is also submitted that the plaintiff has failed to demonstrate how he can claim any right in these properties during the lifetime of the lawful owners.

12. It is also the case of defendants no.1 and 2 that during the lifetime of defendant No. 1, no right, title, or interest can accrue in favour of the plaintiff in any of the aforementioned properties. It is, thus, submitted by Mr. Mahindro that the plaintiff has neither pleaded nor produced any documentary proof indicating the existence of an HUF or coparcenary structure, nor any pleading to the effect of joint family funds being



utilised for the purchase of the properties in question. Further learned counsel also submits that the averments made in the plaint, even if taken at face value, do not disclose any cause of action in favour of the plaintiff and consequently, the present suit is liable to be rejected *in limine* under the provisions of Order VII Rule 11 of CPC. Reliance has been placed on the decisions in *Sunny v. Raj Singh*,¹ *Suraj Munjal v. Chandan Munjal*,² *Surender Kumar v. Dhani Ram*,³ *Sagar Gambhir v. Sukhdev Singh Gambhir*,⁴ and *Naval Kishore v. Jugal Kishore*,⁵ to contend that the plaintiff has no right to continue with the instant suit.

13. Further reliance is also placed on the decisions in *Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai*,⁶ *Vadakkethodukayil Sreedharan Nair v. Koottivattathazhath Soumini*,⁷ *Durai v. Dhanamalli S.A.*,⁸ *Mohd. Saful v. Haryana Urban Development Authority*,⁹ *North Delhi Municipal Corporation v. Ashok Kumar Jain*,¹⁰ and *K. Raju v. Tahsildar Mettur Taluk Office*.¹¹

14. *Per Contra*, Mr. Yatendra Sharma, learned counsel appearing for the plaintiff contends that rejection of the plaint under Order VII Rule 11(d) of CPC must be confined to a strict and narrow construction. Reliance is placed on the decision of the Supreme Court in *Kamala and*

¹ (2015) SCC OnLine 13446

² 2019 SCC OnLine Del 6889

³ 2016 SCC OnLine Del 333

⁴ 2017 SCC OnLine Del 7305

⁵ 2013 SCC OnLine Del 841

⁶ (2022) 12 SCC 128

⁷ 2019 SCC OnLine Ker 17676

⁸ S.A.(MD) No. 871 of 2010

⁹ 2016 SCC OnLine P&H 16312

¹⁰ 2015 SCC OnLine Del 9224

¹¹ 2016 SCC OnLine Mad 16192



Ors. v. K.T. Eshwara Sa and Ors.,¹² wherein it was held that the determination under clause (d) of Order VII Rule 11 of CPC must be made solely on the basis of the averments in the plaint and no addition or subtraction can be made to the plaint at that stage, nor can any piece of evidence be considered. Reliance has also been placed on the decision of *Shakti Bhog Food Industries Ltd. v. Central Bank of India*,¹³ and *Srihari Hanumandas Totala v. Hemant Vithal Kamat*.¹⁴

15. It is further contended by Mr. Sharma that the plaint, when read holistically, discloses a subsisting cause of action and cannot be rejected merely on the contention that one of the reliefs sought therein may not be granted. Without prejudice to the above, learned counsel avers that even if, for the sake of argument, the Court were to accept the assertion of the defendant nos. 1 and 2 to the effect that that the relief of partition is not maintainable, the plaint also prays for declaratory and injunctive reliefs which survive independently and must proceed to trial.

16. Mr. Sharma, learned counsel, has further placed reliance on the decision in *Kum. Geetha v. Nanjundaswamy*¹⁵, where the Supreme Court reaffirmed the principle that the plaint cannot be rejected in part. The Court held that the rejection of the plaint in respect of only some of the properties or some of the defendants is impermissible under Order VII Rule 11 of CPC.

17. In view of the above, it is submitted by the learned counsel for the

¹² (2008) 12 SCC 661

¹³ (2020) 17 SCC 260

¹⁴ (2021) 9 SCC 99



plaintiff that the present plaint, which seeks both declaratory and injunctive reliefs, cannot be rejected partially.

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

19. *In limine*, the Court is mindful of the settled legal position that the power under Order VII Rule 11 of CPC is a drastic remedy that is to be exercised where the plaint, on a plain reading, fails to disclose a cause of action or is barred by law. The provision mandates that the plaint shall be rejected in its entirety where any of the enumerated grounds are satisfied. It is equally well-settled that the Court must, for the purposes of such determination, confine itself strictly to the averments in the plaint, and not traverse beyond it or consider the defence raised in the written statement. The aforesaid view has been emphatically reiterated in *Dahiben v. Arvinbhai Kalyanji Bhanusali*,¹⁶ *Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle*¹⁷, and *Smt. Uma Devi & Ors. v. Sri Anand Kumar & Ors.*¹⁸, wherein the Court held that if from a holistic reading of the plaint it appears that the claim is barred by any law or is founded on an illusory or misconceived cause of action, the entire plaint is liable to be rejected at the threshold.

20. Moreover, in *Kamala*, the Court reiterated that the power under this provision is not to be exercised cursorily, but with due regard to the

¹⁵ 2023 SCC OnLine SC 1407

¹⁶ (2020) 7 SCC 366

¹⁷ 2024 SCC OnLine SC 3844

¹⁸ 2025: INSC : 434



substantive legal foundation of the claim, and that if no cause of action is found to be disclosed, the Court is under a duty to reject the plaint. Furthermore, in *Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.*¹⁹, the Supreme Court held that rejection of the plaint cannot be done in part and that the plaint must either stand or fall as a whole. The doctrine of partial rejection is alien to the scheme of Order VII Rule 11 of CPC, and the Court is not empowered to dissect the plaint into fragments so as to reject certain portions while retaining the rest. Thus, in applying the test under Order VII Rule 11 of CPC, the Court must examine whether the plaint, in its entirety, discloses a legally sustainable cause of action and whether it survives scrutiny under statutory and settled principles of law. The relevant extract of the aforesaid decision is reproduced hereinunder: -

“4. It is settled law that the plaint as a whole alone can be rejected under Order 7 Rule 11. In Maqsd Ahmad v. Mathra Datt & Co. [Maqsd Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021], the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms : (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

“4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code.”

5. Similarly, in Bansi Lal v. Som Parkash [Bansi Lal v. Som Parkash, AIR 1952 Punj 38], the High Court held : (AIR p. 39, para 7)

“7. But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has relied on a

¹⁹ (2018) 11 SCC 780



statement of the law given in Mulla's Civil Procedure Code at p. 612 where it is stated: "This rule (Order 7 Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on Raghubans Puri v. Jyotis Swarupa [Raghubans Puri v. Jyotis Swarupa, ILR (1906-07) 29 All 325] , Venkata Rangiah Appa Rao v. Secy. of State [Venkata Rangiah Appa Rao v. Secy. of State, 1930 SCC OnLine Mad 123 : ILR 54 Mad 416 : AIR 1931 Mad 175] and Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] In reply to this argument Mr Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part. I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly."

6. *In Venkata Rangiah Appa Rao v. Secy. of State [Venkata Rangiah Appa Rao v. Secy. of State, 1930 SCC OnLine Mad 123 : ILR 54 Mad 416 : AIR 1931 Mad 175] , the Madras High Court held : (AIR p. 176 : SCC OnLine Mad)*

"... Referring to Section 54 of the old Civil Procedure Code, the learned Judges state that that section only provides for the rejection of a plaint in the event of any matters specified in that section not being complied with and it does not justify the rejection of any particular portion of a plaint. Section 54 now corresponds to Order 7 Rule 11 of the Civil Procedure Code. The plain meaning of that rule seems to be that if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint. Non-compliance with the requisites of Section 80 of the Civil Procedure Code, was taken to be a ground covered by clause (d) of Rule 11, aboveresferred to. Even if it should be taken



that that clause does not strictly apply to the present case, I must hold that the suits are liable to dismissal on account of non-compliance with Section 80 of the Civil Procedure Code.”

It was further found that if the suit was dismissed for want of notice against the Government under Section 80 CPC, it cannot be allowed to proceed against the other defendants for the reason that the Government's right to resume inam lands, on the facts of that case, stands unaffected, and that being so, the plaintiff's claim to recover possession of such lands from other defendants would also fall to the ground for the simple reason that they have no right then to resume those inams. It was, therefore, held on the peculiar facts of that case that for the reasons given the suit would fail as a whole.

7. However, in Kalapu Pala Subrahmanayam v. Tiguti Venkata Peddiraju [Kalapu Pala Subrahmanayam v. Tiguti Venkata Peddiraju, 1970 SCC OnLine AP 30 : AIR 1971 AP 313] a Single Judge referred to Venkata Rangiah Appa Rao v. Secy. of State [Venkata Rangiah Appa Rao v. Secy. of State, 1930 SCC OnLine Mad 123 : ILR 54 Mad 416 : AIR 1931 Mad 175] , and then held that the suit was barred by time in respect of only certain items of property and not in respect of others. Despite this, it was held that since the plaint as a whole should have been rejected, the baby was thrown out with the bathwater, and the entirety of the plaint and not merely the properties against which the suit could not proceed (as it was barred by limitation), was rejected.”

21. Furthermore, in ***Central Bank of India v. Prabha Jain***²⁰, the Supreme Court recently held that the power to reject a plaint at the threshold must be exercised with caution and within the narrow confines of the rule. It reiterated that for the purposes of Order VII Rule 11 of CPC, the plaint must be read as a whole and the Court is to examine only the averments made therein, without reference to the defence or any external evidence. If, on a meaningful reading, the plaint discloses a cause of action, the application for rejection must fail. Further, the Court



underscored that a plaint cannot be rejected in part, the power under Order VII Rule 11 of CPC is to be exercised only in respect of the entire plaint. If the suit is found maintainable even against one of the defendants or in respect of any part of the relief sought, the plaint cannot be partially rejected. Paragraph no. 23 and 24 of the aforementioned decision read as under:-

“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.”

22. Therefore, the power under Order VII Rule 11 of CPC is intended to weed out frivolous or legally untenable claims at the threshold. It is a stringent and exceptional remedy that must be invoked only where the plaint, on a plain and meaningful reading, discloses no cause of action or is patently barred by law. The determination under this provision must be confined solely to the pleadings contained in the plaint, without reference to the defence, documents, or evidence. The plaint must be examined as a whole, and if any part of it discloses a legally tenable cause of action, the

²⁰ (2025) 4 SCC 38



plaint cannot be rejected. The plaint must either be rejected in its entirety or not at all. Consequently, if even one of the reliefs sought is maintainable, or if the claim discloses a triable issue in respect of any defendant, the suit must be permitted to proceed in full, and the Court must refrain from making any adverse observations on individual reliefs or causes at this stage.

23. The legal position concerning the interplay between Hindu law and the principles governing the rejection of plaints under Order VII Rule 11 of the CPC has been categorically elucidated by this Court in *Harmanpreet Kaur Dhir v. Pritam Singh Bhatia*²¹, *Jiya Sharma (Minor) v. Mr. Deepak Sharma*²², and more recently in *Pooja Wasal v. Sh. Ramesh Grover*²³. Recently, in *Jiya Sharma*, the Court held that in cases where a partition is sought based on claims arising from rights in an HUF, the plaint must strictly conform to the requirements stipulated under Order VI Rule 4 of CPC. The aforementioned provision mandates that the plaintiffs must meticulously delineate all material and requisite factual particulars forming the basis of the cause of action. It was held that specifically in circumstances where an HUF property is alleged to exist due to the act of an individual voluntarily contributing self-acquired property into the common HUF, the plaint must comprehensively articulate the factual matrix surrounding such act, including clear and specific details regarding the creation of the HUF. In paragraphs nos. 27 and 28, while relying on the decision of *Harmanpreet Kaur Dhir*, the

²¹ 2025:DHC: 1787 passed in CS(OS) 261/2024

²² 2025 SCC OnLine Del 2337

²³ 2025: DHC 3507 passed in CS(OS) 567/2023



Court held as under:

“27. Furthermore, in **Harmanpreet Kaur Dhir**, the Court, after analyzing various precedents by the Supreme Court and this Court, laid down the following principles: -

“On the anvil of the aforesaid legal exposition, the following principles emerge:-

a. A Hindu Joint Family consists of lineal descendants from a common ancestor, including wives and unmarried daughters.

b. Prior to the 2005 amendment to the Act of 1956, only male descendants up to three generations from the common ancestor were coparceners. The amendment granted equal coparcenary rights to daughters, ensuring parity with sons. It has also been held by the Supreme Court in **Vineeta Sharma** that marriage does not alter the status of the daughter as a coparcener. It has also been reiterated that coparcenary rights are acquired by birth, not inheritance, and persist irrespective of the father's survival on the amendment's enactment date.

c. A HUF is primarily created for taxation purposes and the properties inherited after 1956 do not automatically assume HUF status unless an HUF pre-existed or was explicitly created by placing property into the common hotchpotch. Once the existence of an HUF is established, rights in the HUF property accrue as if the property is jointly owned by all coparceners.

d. While filing a suit for partition on the ground of coparcenary rights, the mere assertion of an HUF's existence is insufficient. The claimant is required to plead detailed pleadings establishing particulars like ancestral lineage, mode of inheritance, and specific fundamental events leading to the formation of an HUF.”

28. In cases where a partition is sought based on claims arising from rights in an HUF, the plaint must strictly conform to the requirements stipulated under Order VI Rule 4 of CPC. This provision mandates that the plaintiffs must meticulously delineate all material and requisite factual particulars forming the basis of the cause of action. Specifically, in circumstances where an HUF property is alleged to exist due to the act of an individual voluntarily contributing self-acquired property into the common HUF, the plaint must comprehensively articulate the factual matrix surrounding such act, including clear and specific details regarding the creation of the HUF. Furthermore, it must substantiate the



resultant entitlement of coparceners to their respective shares in the alleged HUF property. A failure to include these essential factual averments undermines the sufficiency of the plaint, rendering it procedurally and substantively inadequate under the ambit of Order VI Rule 4 of CPC.”

24. Moreover, as also reiterated in *Pooja Wasal*, in *Birbal Saini v. Satyawati*²⁴, the Court highlighted the distinction between ancestral and self-acquired property was also emphasized. Ancestral property is one inherited through the male lineage, in which heirs acquire an interest by birth, whereas self-acquired property is obtained through individual effort or non-ancestral means and is freely alienable. The doctrine of blending or throwing a property into a common pool permits a coparcener to voluntarily merge his self-acquired property into the joint family property by clear and unequivocal intention, making it subject to the incidents of the coparcenary. The character of Hindu joint property is fluid and contingent on events such as birth, partition, and intention to blend.

25. Recently, the Supreme Court in *Angadi Chandranna v. Shankar & Ors.*²⁵ held that once a partition has lawfully taken place among coparceners, the properties allotted to each member cease to retain their character as joint family property and become the separate and self-acquired properties of the respective allottees. In the facts of that case, the Court noted that a registered partition deed was executed in 1986 between defendant No.1 therein and his brothers, conclusively dividing the joint family properties. Subsequently, defendant No.1 therein

²⁴ 2024 SCC OnLine Del 9276

²⁵ 2025 SCC OnLine SC 877



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purchased the suit property from his brother (to whom it was allotted under the partition), thereby acquiring it independently. The Court held that the claim of the plaintiff that suit property remained ancestral was rejected, as they failed to establish either the existence of a family nucleus or any act of blending by defendant No.1, therein. The Court reiterated that in the absence of a clear and conscious intention to merge self-acquired property into the joint family pool, the doctrine of blending does not apply. Thus, the Court emphasised that the partition deed severed the joint status and conferred absolute ownership of the allotted shares, defeating any subsequent claim of coparcenary rights unless legally established.

26. Consequently, in order to succeed in a claim that a property is of ancestral nature under Hindu law, a party must plead and prove specific material facts establishing that the property has devolved from an ancestor up to four generations without any disruption in the lineage of succession. The party asserting such a claim must not only state the ancestral source of the property but also affirmatively show that the property has remained undivided until now. Where a partition has admittedly taken place, and such fact is also unequivocally pleaded in the plaint, the onus upon the party asserting the continued ancestral character of the properties becomes substantially heightened. Upon partition, the properties allotted to an individual coparcener assume the character of his separate and exclusive estate as has been held in *Angadi Chandranna*.

27. In such cases, it is incumbent upon the party alleging otherwise to



plead with specificity and establish that, notwithstanding the severance of status, the said properties retained their ancestral nature by virtue of an unequivocal act of volition on the part of the allottee, manifesting an intention to blend the same into the joint family estate. In the absence of such pleading and proof, the presumption operates in favour of the properties being self-acquired. Moreover, vague or general allegations regarding joint income or family pooling are insufficient.

28. In order to scrutinize the pleadings in light of the settled legal position elucidated hereinabove, it becomes imperative to undertake a comprehensive examination of the averments contained in the plaint, particularly with reference to all the properties in question and the character and nature of the rights asserted therein.

29. The relevant paragraphs of the plaint are reproduced herein under:-

“4. That since the plaintiff is the legal heir of the defendant No.1, who received the properties as ancestral properties from late Sh. Hari Chand Nandwani and late Smt. Kamlesh Nandwani, that is, his father and mother, the plaintiff is entitled to institute a suit for partition to demarcate his share in the said properties through metes and bounds.”

“8 That the property mentioned at A was purchased by Late Hari Chand Nandwani and his wife Late Smt. Kamlesh Nandwani from Om Prakash, Harish Chander, Subhash Chander, Ram Piyari and Prakash Chander through a Sale Deed dated 18.06.1998.”

9. That said Property A was co-owned in 50% share each by Late Hari Chand Nandwani and his wife, being the father and mother of the defendant No.1. After the death of the mother of defendant No.1 on 16.12.2020 and his father on 30.04.2021, the defendant No. 1 received 50% share of the property mentioned at "A". The defendant No. 1 released his share in favour of his sister namely Sunita Sachdeva i.e. defendant No. 2 through a Relinquishment Deed dated 19.02.2021. The plaintiff is currently residing at



Property mentioned at "A". The plaintiff is entitled to receive 1/3rd share out of 112 share of the defendant No.1 received as ancestral property after the demise of his mother on 16.12.2020 and father on 30.04.2021 i.e. to say that the plaintiff would receive 1/6th share of entire property mentioned at "A", he, being the legal heirs of defendant No.1 and having successive rights in the ancestral property. The property being ancestral, the coparceners have right to claim shares and defendant No.1 has no right to dispose off or to part with the ancestral property that too malafidely for depriving the plaintiff from his legal rights. The plaintiff being coparceners have successive rights as per Hindu Succession Act. Defendant No.1 released his shares in favour of defendant No.2 just to satisfy his ego and to take revenge from Ms. Priti Arya Nandwani, wife of defendant No. 1 and the mother of plaintiff and defendant no.3. Copy of plaintiffs Aadhar card is annexed herewith as DOCUMENT-P-1. Copy of Relinquishment Deed along with its true typed copy dated 19.02.2021 issued by defendant No.1 in favour of defendant No.2 is annexed herewith as DOCUMENT -P-2 (COLLY). Copy of House Tax Receipts Late Hari Chand Nandwani and Late Smt. Kamlesh Nandwani is annexed herewith as DOCUMENT -P-3 (COLLY). Copy of site plan of the property IS annexed herewith as DOCUMENT -P-4."

11. That the Property mentioned at "B" was owned by late Rihuram Nandwani who died on 26.06.1983. The property then devolved on his legal heirs Late Hari Chand Nandwani, Late Bansilal, Late Khanchand and Late VishanDevi respectively. Late Khanchand and Late Vishan Devi had relinquished their shares in the said property in favour of Late Hari Chand Nandwani and Late Bansilal by a Release Deed dated 04.06.1984. Further Bansilal and Late Hari Chand Nandwani partitioned the said property through a Partition Deed dated 02.09.1986. The Defendant No.1, being the son of Late Hari Chand Nandwani, became a coparcener in the said property and the plaintiff, being the legal heirs of the defendant No.1, acquired successive rights in the property being the coparcener. Plaintiff has all the right to demand partition of the said property through metes and bounds. Copy of Relinquishment Deed dated 04.06.1984 alongwith its true typed copy is annexed herewith as DOCUMENT -P-6 (Colly). Copy of Partition Deed dated 02.09.1986 alongwith its true typed copy is annexed herewith as DOCUMENT-P-7 (Colly). Copy of electricity bill in the name of Late Hari Chand Nandwani is annexed herewith as DOCUMENT -P-8. Copy of death certificate of Rihuram Nandwani IS annexed herewith as DOCUMENT-P-9. Copy of site plan of the property is annexed herewith as DOCUMENT-P-10."



12. That the Property mentioned at "C" was co-owned in 50%share each by Hari Chand Nandwani, the father of defendant No. 1 and Smt. Saroj Rajpal i.e. maternal aunt of the Defendant No.1. The defendant No.1 is entitled for his shareas against the share of his father who died on 30.04.2021 int he said property. The plaintiff being the legal heirs of the Defendant No.1 holding successive rights against DefendantNo.1 & and his grandfather late Hari Chand Nandwani inbeing natural heirs and coparceners to the ancestral property. The plaintiff would receive 1/3rct share out of 114th share of the defendant No.1 received as ancestral property from his father i.e. to say each of the plaintiff would receive lli11share of entire property mentioned at "C". Copy of House Tax Receipts of the said property is annexed herewith as DOCUMENT -P-11. Copy of site plan of the said property is annexed herewith as DOCUMENT -P-12. Copy of the Certificate form under 65-B Indian Evidence Act is attached herewith as DOCUMENT -P-13."

30. Upon perusal of the aforesaid paragraphs, it is seen that the plaintiff has throughout attempted to project the properties mentioned at (i), (ii), (iii) as ancestral properties, thereby seeking entitlement through coparcenary rights. However, the supporting facts as pleaded and documents relied upon by the plaintiff, themselves, cast serious doubt on such a plea.

31. With respect to Property (i), the plaintiff submits in paragraphs no. 8 and 9 that the said property was purchased by Late Hari Chand Nandwani and his wife Late Smt. Kamlesh Nandwani through a registered Sale Deed dated 18.06.1998. Therefore, it is an admitted position that the property was jointly purchased in equal shares by the father and mother of defendant No.1 in their individual capacities. This factual assertion unequivocally characterizes Property (i) as self-acquired property of the parents and not as ancestral in origin. Nonetheless, the plaintiff subsequently attempts to recharacterize the property as ancestral,



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claiming a 1/6th share through coparcenary rights *via* defendant No.1. The two positions cannot stand simultaneously and are irreconcilable in the absence of any pleading showing a nucleus of ancestral property or subsequently blending thereof in a common pool.

32. Insofar as property (ii) is concerned, the plaintiff has averred that the same originally belonged to Late Rijhu Ram Nandwani and was inherited by his sons, including Late Hari Chand Nandwani. While this may initially lend credence to the argument of ancestral origin, the pleadings reveal that the property was relinquished by certain Class I legal heirs in 1984 and subsequently partitioned through a Partition Deed in 1986 between Late Hari Chand Nandwani and Late Bansi Lal. Therefore, as per the plaintiff's own pleading, partition of the property (ii) had already taken place and as elucidated hereinabove, once partitioned, the character of the property ceases to be joint or ancestral in the hands of the coparceners, and it became the self-acquired or exclusive property of the parties as per their respective shares. The plaintiff, however, proceeds to claim coparcenary rights afresh on such post-partitioned property.

33. Regarding property (iii), the plaintiff states that it was jointly co-owned in equal shares by Late Hari Chand Nandwani and his Sister in Law, Smt. Saroj Rajpal, the maternal aunt of defendant No.1. A co-ownership of property between two adults with no indication of acquisition through a common ancestor or HUF, once again implies individual acquisition and not ancestral character. The plaintiff nevertheless attempts to claim that the share of defendant No.1 in his



father's portion is ancestral and that the plaintiff is entitled to a fractional share thereof. This claim once again reflects the intention on the part of the plaintiff to cast a garb of ancestral property upon self-acquired or co-owned property, solely to lay a claim of partition.

34. Thus, from the foregoing analysis, it is clear that the plaint, in an attempt to invoke right to partition based on coparcenary rights, fails to disclose any legally sustainable cause of action. The pleadings are vague, contradictory, and bereft of the material particulars required under Order VI Rule 4 of the CPC, especially in a suit invoking rights on the basis of ancestral or HUF character of the property. The assertion of the ancestral character of the suit properties in the instant case is not supported by the facts pleaded by the plaintiff.

35. Moreover, the contention advanced by Mr. Sharma that even if the relief for partition is liable to be rejected based on the objections raised by defendants No.1 and 2, the reliefs pertaining to injunction and declaration ought to be preserved, and consequently, the plaint cannot be rejected in its entirety, is wholly misconceived and unsustainable at this stage.

36. Learned counsel for defendants No.1 and 2 has rightly placed reliance on a decision of the Supreme Court in *Padhiyar Prahladji Chenaji*, wherein the Court essentially held that consequential reliefs are maintainable only when the primary relief is itself legally sustainable. Where the main relief is *ex facie* untenable or barred by law, any relief claimed as incidental or ancillary to it must necessarily fail. The Court cannot sever the plaint to preserve consequential reliefs once the



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foundational cause of action is found to be deficient. The Court held that the doctrine of severability does not apply to piecemeal sustenance of reliefs where they are inherently dependent on the main claim.

37. The reliefs of injunction and declaration, being consequential in nature, are predicated upon the assertion of the plaintiff that he has a title in the suit properties through his paternal ancestry and the alleged existence of joint family properties. These reliefs cannot be severed from the principal claim for partition, which forms the very foundation of the purported right of the plaintiff. In the absence of a maintainable claim for partition, the consequential reliefs must also necessarily fail.

38. Accordingly, as the primary relief is found to be untenable, the plaint is liable to be rejected in its entirety under Order VII Rule 11 of CPC.

39. In view of the aforesaid, the instant application stands dismissed.

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In view of the order passed hereinabove, the suit, along with the pending applications, stands rejected.

**(PURUSHAINDR KUMAR KAURAV)
JUDGE**

MAY 19, 2025/mj