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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ CS(OS) 325/2020 and I.A. 9927/2020, I.A. 9928/2020

KAMAL DHAWAN

S/O SH. RAJINDER KUMAR DHAWAN

PRESENTLY RIO 714/22, JOSHI ROAD,

KAROL BAGH, DELHI 110005

.....PLAINTIFF

(Through: Mr.S. S. Handa and Mr. Shiva Hans, Advs.)

versus

VINOD DHAWAN

S/O RAJINDER KUMAR DHAWAN

R/O A-13-14, SAWAN PARK,

ASHOK VIHAR, PHASE-3,

NEW DELHI 110052

.....DEFENDANT NO.1

MRS. SARITA KUMARI

W/O MR. SURESH BHATIA

R/O POCKET B, HOUSE NO 2A, SHIVAM APPARTMENTS,

ASHOK VIHAR, PHASE-2, DELHI 110052DEFENDANT NO.2

MRS. RESHMA TANDON

W/O MR. PUNEETTANDON

R/O 713-714, 3RD FLOOR, DOUBLE STOREY,

NEW RAJENDAR NAGAR, DELHI 110060DEFENDANT NO.3

(Through: Mr. P. S. Bindra, Sr. Adv with Mr. Bhuvneshwar, Adv for D-1.

Mr. Sachin Saini, Adv for D-2 and 3.)



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Reserved on: 11.09.2025

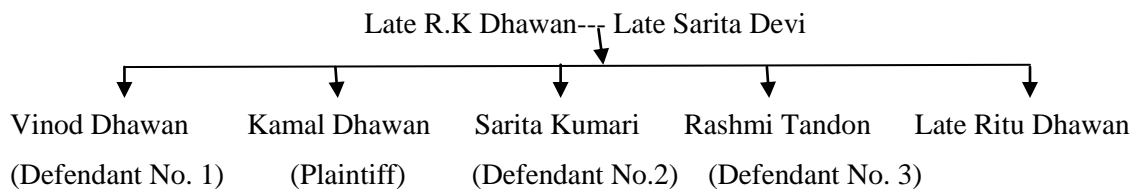
Pronounced on: 19.09.2025

JUDGMENT

I.A. 1254/2021 (BY DEFENDANT NO.1 UNDER ORDER VII RULE 11 OF THE CPC)

1. The case as set up in the plaint is as follows:

1.1. The plaintiff and defendants are the children of late Smt. Sarla Devi and late Sh. Rajinder Kumar dhawan. The parties to the suit are siblings and the relevant family chart is extracted below, for reference:



1.2. The plaintiff claims that both the parents died intestate; Sh. Rajinder Kumar Dhawan passed away on 01.10.2020 and Smt. Sarla Devi, on 14.01.202. Smt. Sarla Devi, held and owned several movable/immovable properties as specified in paragraph no. 5 of the plaint, which is extracted below, for reference:

“5. That said Smt. Sarla Devi during her lifetime held & owned several immovable/movable properties. The known properties are enumerated as under:

5.1 IMMOVABLE PROPERTIES

- A. *Cl/14, Ashok Vihar, Phase-2, Delhi 110052- approx 312 sqm.
Consisting of Ground floor and first floor
The said Property was raised by contribution & used by the legal*



heirs and was a Hindu undivided Family House, lying abandoned since long till date. The same is in joint and constructive possession of all the said legal heirs.

- B. A-14 Sawan Park (Harijan Colony), Ashok Vihar, New Delhi admeasuring 84 Sq M.*
- C. Factory/plot no. 185, pocket I, Sec 4 Bawana Indusrial Area, Delhi admeasuring approx 100 sq. meter lying in dilapidated condition.”*

1.3. Apart from his share in the property left behind by his wife, Sh. Rajinder Kumar Dhawan owned other properties as specified in paragraph 14 of the plaint, which is extracted below, for reference:

“14. That Late Sh. RK. Dhawan to the knowledge of the plaintiff in addition to his share in the properties owned & held by his wife Late Smt. Sarla Devi, owned & held the following properties;

14.1 IMMOVABLE PROPERTIES

- A. A-13 Sawan Park (Harijan Colony), Ashok Vihar, Delhi admeasuring 84sq.M consisting of Ground floor and first floor.*
- B. Factory/plot in Bawana industrial area bearing no 145, Pocket N, Sector 2. Bawana Industrial Area, Delhi 110039, approx 150 sq. M lying in dilapidated condition*
- C. Flat bearing no. (not known) at Bawana Delhi.*

14.2 MOVABLE PROPERTIES

- A. Savings bank account in Bank of Baroda, Ashok Vihar, Delhi*
- B. Savings bank account in SBI, Ashok Vihar, Delhi*
- C. Joint bank locker in SBI, Ashok Vihar, Delhi held jointly with his wife late Smt. Sarla Devi.*
- D. Business and assets of M/S Sarita Manufacturing Co. at shop no 5394/3] anta Market, Sadar Bazaar Delhi 110006 and godown-no 2904/6 Ground Floor Shri Hanuman Market, Sadar Bazaar, Delhi-110006 which is being taken on rent.”*

2. Mr. P. S. Bindra, learned senior counsel for defendant no.1 has made the following broad submissions:

2.1. There are no averments as required under Order VI Rule 4 of the Code of Civil Procedure, 1908 (CPC) so as to justify, the properties belong to Smt. Sarla Devi and were of the Hindu Undivided Family



(HUF) as mentioned in paragraph no. 5.1 of the plaint. There are no details, such as the specific date, month and year etc. with respect to creation of HUF or with respect to the suit property being blended in the common hotchpot.

2.2. Late Smt. Sarla Devi having executed Will dated 01.11.2019 bequeathing her movable and immovable properties in favour of defendant no. 1, the suit is not maintainable *qua* the properties stated to have belonged to her.

2.3. As far as the properties which belonged to the father of the parties are concerned, the property at Sawan Park was gifted by late Sh. Rajinder Kumar Dhawan *vide* registered Gift Deed dated 26.08.2020 to defendant no. 1, whereas, the premises at Plot No. 154, Pocket N, Sector 2, Bawana Industrial Area was allotted by DSIIDC to the partnership concern M/s Sarita Manufacturer Company where defendant no. 1 and his wife Smt. Priya Dhawan are the partners.

2.4. The father of the plaintiff i.e. Late Sh. Rajender Kumar Dhawan retired from partnership concern on 27.08.2020 and prior thereto Smt. Priya Dhawan was inducted as working partner on 23.08.2025 and hence the plaintiff cannot claim for partition of a property which did not belong to Sh. Rajender Kumar Dhawan.

3. In order to substantiate the aforesaid submissions, Mr. P. S. Bindra places reliance on a decision dated 30.08.2022 of this Court in the cases of *Sangeeta Sehgal & Ors. v. Gautam Dev Sood and Ors.*,¹; *Sarita Dua vs. Dr. Gautam Dev Sood & Ors.*²; t *Dr. G. M. Singh v. Dr. Trilochan Singh*

¹ 2022:DHC:3397

² 2023 SCC OnLine Del 3804



*& Ors.*³; *Surinder Kaur v. Ram Narula & Ors.*⁴; and *Anita Rani Mangla v. Bhagwat Dayal & Ors.*⁵ and the decision of the Supreme Court in the case of *Prem Singh & Ors. v. Birbal & Ors.*⁶

4. The aforesaid submissions are strongly opposed by Mr. S.S. Handa, learned counsel who appears for the plaintiff and Mr. Sachin Saini, learned counsel who appears for the defendant nos. 2 and 3.

5. Learned counsel jointly contend that the instant application is misconceived and the same deserves to be dismissed. They have made the following submissions:

5.1. There are unequivocal statements made in the plaint with respect to the title of the parties' parents over the properties in question, and that they had died intestate.

5.2. At the stage of an application under Order VII Rule 11 of the CPC, only the averments in the plaint are relevant. The plaint specifically discloses a cause of action and therefore, the instant application deserves to be dismissed.

5.3. Even if the case set up by the defendant no. 1 is looked into, the plaint would not be liable for rejection. The defendant himself relies on a Will and if the same is presumed to be correct for the sake of argument, the necessary inference to be drawn therefrom would be that the parents of the parties were the absolute owners of the suit properties as claimed in the plaint.

6. I have considered the submissions made by learned counsel for the

³ 2022:DHC:4435.

⁴ 2013:DHC:5565

⁵ 2018:DHC:6657

⁶ (2006) 5 SCC 353



parties and have perused the record.

7. The legal position with respect to the provisions under Order VII Rule 11 of the CPC has been fairly well settled. The Supreme Court, in its decision in *Dahiben v. Arvindbhai Banusali and Others*,⁷ has examined the law under the said provision and held as under:

“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.

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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.

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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

⁷ (2020) 7 SCC 366



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.”

8. This Court, in its decision in **Joginder Pal Singh v. The State and Others**,⁸ has held as under:

“10. The language used in clause (d) of the said rule indicates that the Court should adjudicate the application assuming the plaint/petition averments to be the truth. Material other than the petition and its accompanying documents, is irrelevant in the instant proceedings.”

9. Thus, it is seen that the averments made in the plaint will have to be considered without looking into the defence of the defendants. The present application is considered in light of the aforesaid legal position.

10. The provision under Section 8 of the Hindu Succession Act, 1956 (HSA) envisages the rules of succession in respect of property left behind by



an intestate male Hindu. In such cases, the property devolves according to the provisions of Chapter-II of the HSA, (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.

11. Going by the provisions under Section 8 of the HSA, under the facts and circumstances of the present case, the plaintiff's position seems to be for partition of the property of a male Hindu, who, according to the plaintiff, died intestate. It remains undisputed that the plaintiff is a Class-I legal heir, under the HSA, being one of the sons of the male Hindu.

12. Similarly, Section 15 of the HSA envisages the general rules of succession in respect of properties left behind by an intestate female Hindu. The said provision provides that the same shall devolve according to the rules set out in section 16 of the HSA, (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) thirdly, upon the mother and father; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother.

13. Under the said provision, the order of succession and manner of distribution among the heirs of a female Hindu is prescribed. One may not be required to go into the deeper exercise of examining the import and the scope of these provisions except to consider that the issue, in the instant case relates to the intestate death of the parties' parents.

⁸ 2025:DHC:7211



14. Under these provisions, the plaintiff is entitled for partition of the properties owned by his parents.

15. In the instant civil suit, the plaintiff has also taken the position that the parents have died intestate and, therefore, the properties owned by them would devolve upon the legal heirs i.e. the plaintiff, defendant Nos.1, 2 and 3 in equal i.e. 1/4th share. However, the plaintiff came to know about the purported execution of a Will and disposition/alienation document, the plaintiff, therefore, in paragraph 16 of the plaint has stated that the purported Will of the mother and alleged disposition/alienation document of the father, if any, are *void ab initio* for various reasons as stated therein. the aforesaid paragraph is extracted as under:

“16. The said Will of the mother and alleged disposition/alienation document of the father if any, is void ab initio inter alia on the grounds as below:

The said Will and disposition/alienation document is procured/manufactured by fraud as neither mother nor father of the parties were of sound and disposing mind

The said Will and disposition/alienation document is procured/manufactured by coercion as the mother and father as the parties were kept in complete control and confinement of defendant no.1.

The said Will and disposition/alienation document is procured/manufactured by importunity as the mother and father of the parties were never in a position to execute any document of their free will and accord.

The said Will and disposition/alienation document is forged and fabricated by defendant no.1

The said Will and disposition/alienation document lacks due execution and mandatory attestation and as enshrined under Sec 63 of the Hindu Succession Act 1956 R/w Sec 68 The Indian Evidence Act

The said Will and disposition/alienation document lacks testamentary intention as the mother and father of the parties always wished and wanted the suit properties to be devolved upon all their children.

The said Will and disposition/alienation document suffers from lack of knowledge, understanding and approval of said Smt. Sarla Devi and/or Sh.



Rajinder Dhawan.

The alleged disposition/alienation document if any of Sh. Rajinder Dhawan may have been procured and that too under suspicious circumstance as he was bed ridden since 2018 till his death.”

16. In the aforesaid background in paragraph 17 of the plaint, the plaintiff states as under:

“17. (i) In the backdrop, the plaintiff hereby states that Smt. Sada Devi and Sh. Rajinder Kumar Dhawan expired intestate and all their rights, interest & title in the suit properties devolved upon her legal heirs i.e. the plaintiff, defendant no. 1,2,3 in equal i.e. 1/4th share. And all the legal heirs are co-owners of the suit properties. And Cl/14 Ashok Vihar, New Delhi after the demise of Smt. Sarla Devi; and being Hindu Undivided Family house and being Hindu Undivided property is in joint and constructive possession of all the legal heirs.

(ii) Without prejudice, the property no. Cl/14 Ashok Vihar, New Delhi; is a Hindu undivided Family House.

As grandmother Late Smt. Ram Pyari sold her jewelry and amongst others its proceeds were invested in raising the business of M/s Sarita Manufacturing co. The family's main business of cosmetics and aerosols manufacturing and trading business was carried in the name of Sarita the defendant no.2; under the name of Sarita Manufacturing company It was mainly from the earning of this business that said Family House was raised. The other family members i.e. father, the defendant no.1,2,3 contributed in raising the said family house as they were also working in the said business. The plaintiff at adolescent age also started working with the family business and contributed in its upkeep and maintenance. The plaintiff and defendant no. 2 & 3 were brought up there and; resided together jointly. Smt. Sarla Devi had no individual business. All the family members including the plaintiff worked in this business in different capacities e.g. Reshma Tandon worked as a supervisor, Kamal Dhawan handled shop in Sadar Bazar, Delhi with his father. (Copy of Letter dated 14/3/2006 showing daughter of defendant no.2 was working with M/S Sarita Manufacturing co. is filed as a document herewith.)

The Family House i.e. Cl/14 , Ashok Vihar is a property of Hindu Undivided Family - a common refuge for daughters to fall back. They held marriage functions, social functions there, prayed together. The defendant no.1 schemed and forced the plaintiff to leave the Family house while the plaintiff did not take anything from the house while leaving and all his belongings are still intact i.e. Bed, Sofas, Furniture, clothes and even Jewellery. However the plaintiff continued to be part of the Hindu Undivided family and its properties till date



The Family House i.e. C-1/14, Ashok Vihar is lying vacant and abandoned since 2004 for the purpose of partition. However, the plaintiff and defendants have been frequently visiting the said Family House with their parents. (the photographs dated 12/10/2020 are referred to in this regard. Further, the said photographs , electricity bill showing that the electricity charges were less than Rs. 200 in last 4-5 months are filed as a document herewith).

In reply to the said notice there is no denial that the said Hindu undivided Family House is in joint and constructive possession of all the legal heirs. The rights &:: interest of the plaintiff were inalienable and non-transferable in Hindu undivided Family House.

(iii) Without prejudice, the said Family house and other properties were held/owned by Smt Sarla Devi as Hindu undivided family properties; while she was not having any separate business. The family business of M/s Sarita Manufacturing co. was run jointly by all members inclusive of the plaintiff. So much so the plaintiff was co tenant of the godown at Sh Hanuman Market Bahadurgarh road used for business. (Document showing the plaintiff as a co tenant of the godown at Sh Hanuman Market Bahadurgarh road is filed as a document herewith.)

In particular CI/14 Ashok Vihar, had a nucleus of ancestral property. It had a blend of earnings of all family members of three generations. Since the family members i.e. father, two sons and two daughters worked, earned, invested, maintained, used, possessed the suit properties jointly. They were joint in food, worship and maintained the character of Hindu Undivided Family property till date. And after the demise of Smt. Sarla Devi is in deemed and joint &:: constructive possession of all the legal heirs. (List of household goods of the plaintiff lying in CI/14 Ashok Vihar, New Delhi properties filed as a document herewith)

(iv) That M/s Sarita Manufacturing co. is a HUF business dealing in cosmetics and aerosols. Its assets are jointly owned being HUF member. And the defendants are liable to partition the same. The share of Sh. Rajinder Kumar Dhawan also devolved upon all the legal heirs. And till it is partitioned the defendant no.1 is liable to account for running of business and assets. He is liable to pay INR 10,000 (ten thousand) per month as Mesne profits/damages for the business activities/user till partition."

17. Therefore, the plaintiff need not delineate the existence of the HUF or coparcenary nature of property.
18. The stand taken in paragraph 6 of the application that the property



was gifted by late Sh. Rajinder Kumar Dhawan, father of the parties *vide* registered deed dated 26.08.2020 to defendant No.1 and that the factory premises was allotted by DSIIDC of partnership concern M/s Sarita Manufacturing Company where defendant No.1 and his wife are the partners cannot be of any significance at this stage.

19. The retirement of late Sh. Rajinder Kumar Dhawan from the partnership concern on 27.08.2020 and induction of Smt. Priya Dhawan as working partner on 23.08.2020 will also not be of much relevance as the plaintiff has clearly stated in paragraph 17 of the plaint that the partnership firm was set up from the income generated/earned by the father of the parties. It is also the case of the plaintiff that grandmother of the plaintiff had sold her jewelry and the proceeds thereof were used in setting up the partnership concern.

20. Under these circumstances, the decisions relied upon by defendant No.1 in the case of *Sangeeta, Sarita Dua, G. M. Singh* will have no relevance. The court, in the said decisions, was dealing with a suit for partition of property held *benami* by the mother of the parties. The plaintiff's claim rested on the assertion that the property was held for the benefit of the HUF. The present case involves intestate succession *simpliciter* and therefore, does not require pleadings in respect of any HUF.

21. So far as the decision in *Surinder Kaur* is concerned, the said case relates to a claim for partition during the lifetime of the father of the plaintiff therein. Under the facts of the present case, the said decision would also not be of assistance to the applicant.

22. This Court, in the decision in *Anita Rani Mangla* and the Supreme Court in the decision in *Prem Singh*, dealt with the question of limitation,



which is not relevant to the present application. Therefore, the said decisions are not of much use to the applicant.

23. Under these circumstances, the prayer made in the instant application cannot be countenanced and is therefore, rejected. However, the observations made herein will have no impact on the merits of the case.

24. All rights and contentions of the parties are left open to be adjudicated during the course of trial.

25. Accordingly, the instant application stands dismissed.

CS(OS) 325/2020 and I.A. 9927/2020, I.A. 9928/2020

1. List all pending applications before the concerned Joint Registrar for proceeding with the matter in accordance with the extant rules on 10.12.2025.

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

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 19, 2025
aks/amg