



2025:DHC:7211



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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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TEST.CAS. 14/2024

1. MR. JOGINDER PAL SINGH

S/O LATE MR. KULWANT SINGH

R/O A-69, 1ST FLOOR,

VISHAL ENCLAVE,

NEW DELHI-110027

....PETITIONER

(Through: Mr. Amit Singh Chauhan, Mr. Arindam Bharadwaj, Mr. R. S. Chauhan and Mrs. Shikha, Advs.)

Versus

1. THE STATE

(GOVT. OF NCT OF DELHI)

DELHI SECRETARIAT COMPLEX, 5TH LEVEL,

B-WING & 5TH LEVEL,

A-WING, I.P. ESTATE, NEW DELHI- 110002

....RESPONDENT NO. 1

2. MR. MANINDER PAL SINGH

S/O LATE MR. KULWANT SINGH

R/O 815, THE ARALIAS,

GOLF COURSE ROAD,

GURGAON-1220002

....RESPONDENT NO. 2

3. MR. JATINDER PAL SINGH

S/O LATE MR. KULWANT SINGH

R/O A-69, 2ND FLOOR,

VISHAL ENCLAVE, NEW DELHI-110027

.. RESPONDENT NO. 3



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**4. MRS. SHAMINDER KAUR**

W/O MR. JATINDER SINGH
R/O A-69, 2ND FLOOR, VISHAL ENCLAVE,
NEW DELHI-110027

.... RESPONDENT NO. 4

5. MRS. RIPNEET KAUR

D/O MR. JATINDER SINGH
R/O A-69, 2ND FLOOR,
VISHAL ENCLAVE, NEW DELHI-110027

... RESPONDENT NO. 5

6. MRS. JASIKA SINGH

W/O MR. GAURAV KHARBANDA
D/O MR. JATINDER SINGH
R/O A-69, 2ND FLOOR,
VISHAL ENCLAVE, NEW DELHI-110027

..... RESPONDENT NO. 6

(Through: Mr. Pawan Jit Singh Bindra, Sr. Adv. with Mr. Lakshay Dhamija, Mr. S. S. Chadha and Mr. Bijoylaxmi Das, Advs. for R-2.)

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Reserved on: 05.08.2025

Pronounced on: 22.08.2025
-----**JUDGMENT****I.A. 34702/2024 (filed on behalf of respondent no.2 under Order VII Rule 11 of CPC)**

The instant application on behalf of respondent no. 2, under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as the CPC*), is for rejection of the petition on the ground that the same is barred by limitation.

2. In light of the short question to be adjudicated herein, it is apposite to briefly enumerate the facts relevant to the present application.



Factual matrix

3. The present petition under Section 276 of the Indian Succession Act, 1925, is for grant of letter of administration in respect of the Will dated 31.03.2015 (*hereinafter referred to as the Will*) executed by late Mr. Kulwant Singh (*hereinafter referred to as the testator*).
4. In the petition, it is disclosed that a suit for partition, bearing no. CS (OS) 540/2018 with respect to the properties which are the subject matter of the present petition, is pending before this Court.
5. The petition further discloses that the Will had not seen the light of day at the time of the institution of the said suit, and that its original came into the plaintiff's power and possession, only upon its retrieval by the Commissioner appointed by the Court therein, in pursuance of its order dated 10.04.2023.

Submissions

6. Mr. P.S. Bindra, learned senior counsel appearing on behalf of respondent no. 2, made the following broad submissions:
 - 6.1 That the petitioner was a party in a suit for partition (*CS (OS) 540/2018*), wherein, in his written statement, the primary claim was that he had rights over the suit property under the Will. Therefore, since he had knowledge of the Will, the limitation period, as provided under Article 127 of the Limitation Act, 1961 (*hereinafter referred to as the Limitation Act*), would expire three years from the date of such knowledge. In the said written statement, he had claimed knowledge of the Will from 15.10.2018, and therefore, the limitation period would expire on 15.10.2021. The present petition was filed in the year 2024, two years later. Thus, the petition is barred by limitation. Reliance is



placed on the decision of this Court in *Pratap Singh and Ors v. the State and Ors.*¹

6.2 That the petitioner has suppressed material facts from the Court, and has approached with unclean hands.

6.3 That the testator was not of sound mind at the time of the alleged execution of the Will, as he suffered from various health ailments, numbing his mental capacities. The testator, thus, was not capable of executing the alleged Will.

6.4 That the Will is forged and fabricated and is not as per the last wishes of late Mr. Kulwant Singh.

6.5 That the petitioner has instituted the present petition only to render the partition suit in respect of the same properties infructuous, and to usurp the rightful share of the respondent no. 2 in the estate of his father.

7. Mr. Amit Singh Chauhan, learned counsel appearing for the petitioner, controverted the aforesaid submissions and made the following submissions:

7.1. That the grounds raised by respondent no. 2 are not founded on the averments in the petition or the documents relied on by the petitioner.

7.2. That petitions for the grant of probate or letters of administration in respect of Wills cannot be filed without annexing the original Will. Therefore, the limitation period for institution of the present petition commenced only once the original Will was retrieved

¹2010:DHC:3977-DB



in pursuance of order dated 10.04.2023 of the Court in CS (OS) 540/2018.

7.3. That the issue of limitation is a mixed question of law and fact, which cannot be decided in the absence of evidence. Therefore, the petition cannot be rejected at the stage of adjudication of an application under Order VII Rule 11 of the CPC.

8. I have considered the submissions of the parties and perused the record.

Analysis

9. At the outset, an examination of the provision under Order VII Rule 11 of the CPC, is germane to the adjudication of the present application. The said Rule is extracted below, for reference:

“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 returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

[(f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.”



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. The said legal position has been settled by the Supreme Court in various judgments, including in *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr Lrs & Ors*². The relevant portion of the said judgment is extracted below, for reference:

“12.2. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to....

12.6. 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.”

11. A perusal of the petition indicates that the factual averments on which respondent no. 2 rests his grounds for his prayer herein do not form a part of the petition and the accompanying documents. In fact, in paragraph 12 of the petition, the petitioner has stated that the Will saw the light of the day only upon its retrieval by the Commissioner appointed by the Court *vide* order dated 10.04.2023. For adjudication on the present application, the limitation period is deemed to have commenced on the date on which the Will was retrieved.

12. Respondent no. 2 relies on the averments in the written statement filed by the petitioner herein, in CS (OS) 540/2018, to contend that the limitation period to file the present petition commenced in 2018 and expired in 2021. The said written statement does not find any mention in the petition

² 2020 INSC 450



preferred herein, nor has it been relied on by the petitioner to establish his case. Such being the case, the said written statement is irrelevant to the present proceedings, and any ground based on the same cannot be entertained. It is pertinent to observe that although the petition contains averments that the petitioner herein is a party to CS (OS) 540/2018, such bald averments do not confer relevance to any written statement that may have been filed by the petitioner herein, in the said case. The Supreme Court, in *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors*,³ held that a plaint cannot be rejected on the ground that the suit is barred by *res judicata*, since the same would require consideration of pleadings and issues in the previous suit. The Court held that the pleadings in the previous suit could not be taken into consideration, since that would amount to traveling beyond the four corners of the plaint. The relevant portion of the said judgment is extracted below, for reference:

“21 In the present case, a meaningful reading of the plaint makes it abundantly clear that when the first respondent instituted the subsequent suit, he had been impleaded as the second defendant to the earlier suit (OS No. 103/2007) that was instituted on 13 March 2007. The first respondent instituted the subsequent suit, OS 138/2008 though he had knowledge of the earlier suit. The plaint in the subsequent suit which was instituted by the first respondent indicates that the he was aware of the mortgage executed in favour of KSFC, that KSFC had executed its charge by selling the property for the recovery of its dues and that the property had been sold on 8 August 2006 in favour of the predecessor of the appellant. As a matter of fact, the plaint contains an averment that there was every possibility that the first respondent may suffer a decree for possession in OS 103/2007 which “has forced” the first respondent to institute the suit for challenging the legality of the sale deed. Given the fact that an argument was raised in the previous suit regarding no challenge having been made to the auction and the subsequent sale deed executed by the KFSC, it is possible that the first respondent then decided to exercise his rights and filed the subsequent

³2021 INSC 387



suit. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (OS No. 138/2008) by the first respondent, no decree had been passed by the civil court in OS No. 103/2007. Thus, the issues raised in OS No. 103/2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103/2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application under order 7 Rule 11(d).

13. The decision relied on by respondent no. 2, in ***Pratap Singh and Ors v. the State and Ors*** having been delivered on an appeal against the decision of the Trial Court granting probate of a Will, does not apply herein, since, while delivering the aforesaid judgment, the Court had the advantage of taking into its consideration, material other than the averments in the petition and the documents annexed along with it.

14. Moreover, the Supreme Court, in its judgment in ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur and others***,⁴ held that the cause of action for institution of probate proceedings is continuous, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed. It also held that Article 137 of the Limitation Act would apply in cases of petitions for grant of probate or letters of administration. A holistic reading of the aforementioned decision would indicate

⁴(2008) 8 SCC 463



that in the case of probate petitions, the question of limitation can only be decided on the basis of the evidence led by the parties.

15. Therefore, the instant application cannot be deemed to have withstood the rigours under clause (d) of Rule 11 of Order VII of the CPC, for rejection of plaint on the ground that it is barred by law.

16. The other contentions of respondent no. 2, challenging the validity of the Will on the ground that it is forged, and that the Testator was not of sound mind at the time of the alleged execution of the Will, cannot be raised at the present stage. Elaborate requirements for proof of a Will are provided for, under Section 67 of the Bharatiya Sakshya Adhiniyam, 2023, and any challenge to the validity of the same, such as the aforesaid contentions, is to be made during the course of trial or at the stage of final adjudication of the dispute.

17. Questions whether the petitioner has approached the Court with clean hands, or whether he has filed the present petition with ulterior motives, etc, are, clearly, questions of fact. Questions of fact can be decided only on the basis of evidence led by the parties, unless the fact in question is judicially noticeable. Therefore, they cannot be the grounds on which an application under Order VII Rule 11 of the CPC can be adjudicated. The respondents are at liberty to raise objections in this regard during the course of trial.

Conclusion

18. In light of the foregoing discussion, the present application for rejection of the petition, under Order VII Rule 11 of the CPC, is hereby dismissed.



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19. In cases such as the present petition, where the maintainability of the petition or suit is challenged on the basis of material beyond the petition or plaint, the litigants would be better served if, instead of seeking rejection of the plaint/petition, framing and adjudication of preliminary issues are sought. Such an approach would help avoid lengthy proceedings.

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Let the matter be placed before the concerned Joint Registrar on 13.10.2025 for taking further necessary steps in accordance with the extant rules.

**(PURUSHAINDR KUMAR KAURAV)
JUDGE**

AUGUST 22, 2025/aks/amg