



2025:DHC:8757



\$-

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

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ **CS(OS) 348/2025, I.A. 13417/2025 and I.A. 13418/2025**

Between: -

**1. MR. FAZLU REHMAN KHATRI**  
S/O LATE ABDUL REHMAN KHATRI

**2. MOHD. SALIM KHATRI**  
S/O LATE ABDUL REHMAN KHATRI

**3. AYYUB KHATRI @ YAKUB KHATRI.**  
S/O LATE ABDUL REHMAN KHATRI

ALL R/O C-1/11, SAFDARJANG DEVELOPMENT  
AREA, NEW DELHI- 110016

....PLAINTIFFS

*(Through: Mr. Ashish Mohan, Sr. Advocate with Mr.Vibhor Verdhan and  
Mr. Anant Beniwal, Advs. with plaintiff No.2)*

AND

**1. MR. ABDUL NASIR KHATRI**  
S/O LATE ABDUL REHMAN KHATRI

**2. NAUSHAD KHATRI**  
S/O LATE ABDUL REHMAN KHATRI

**3. JIKRU REHMAN KHATRI**  
S/O LATE ABDUL REHMAN KHATRI

ALL R/O C-1/11, SAFDARJANG DEVELOPMENT



2025:DHC:8757

**4. SABA KAHTRI**

D/O ABDUL NASIR KHATRI

C-1/11, SAFDARJANG DEVELOPMENT AREA,  
NEW DELHI- 110016

ALSO AT:

R/O 2701, 27<sup>TH</sup> FLOOR, LASHKARIA GREEN HEIGHTS, NEAR  
INFINITY MALL, ADARSH NAGAR, ANDHERI WEST, MUMBAI,  
MAHARASHTRA, 400102

....DEFENDANTS

*(Through: Mr. Mukesh Kumar Verma and Mr. Shivam Verma, Advs. With  
defendants in person.)*-----  
%

Reserved on: 15.09.2025

Pronounced on: 26.09.2025  
-----**JUDGMENT****I.A.17271/2025** *(under order VII Rule 11(a, c & d) CPC on behalf of  
defendant no.1 for rejection of plaint)*

The instant suit arises from a familial dispute amongst brothers, wherein the plaintiffs seek a declaration that three Memoranda of Understanding (MOUs)/Family Settlements, all dated 18.02.2020, are legal, valid, and binding. The plaintiffs assert that the properties mentioned in the said MOUs are joint family properties, and that they are entitled to an equal 1/6<sup>th</sup> share therein. They further seek partition of these properties by metes and bounds, rendition of accounts in respect of transactions related to the suit properties, and other consequential reliefs.

2. The reliefs claimed by the plaintiffs are reproduced herein for proper



appreciation:-

*“a) Pass a decree for Declaration declaring that the all the 3 MOU/Family Settlements dated 18.02.2020 are legal, valid, binding between the parties;*

*b) Pass a decree for Declaration declaring that properties mentioned in MOU/Family Settlements dated 18.02.2020 are joint family properties and plaintiff's has equal share i.e. 1/6th share in those properties;*

*c) Partition the suit properties as mentioned in schedule 1 by meets & bounds between the parties herein;*

*d) Direct respondents to provide rendition of account i.e. complete details of the accounts in respect of properties being sold, purchased & consideration amount so received by defendants without the consent of plaintiff's;*

*e) Pass any other or further order/ directions in favour of the plaintiff and against the defendant, in the interest of justice.”*

3. The plaintiffs contend that the suit properties, which were acquired from 1983 onwards, were purchased using joint family funds, and were held and managed under an oral understanding amongst the six brothers that all properties, regardless of in whose name they stood, would be divided equally. This understanding, according to the plaintiffs, was first formalised through a written Memorandum of Family Settlement dated 22.08.2013, and thereafter reaffirmed through three written and notarised MOUs dated 18.02.2020, which were allegedly signed by all six brothers.

4. It is averred that the parties maintained joint accounts in Oriental Bank of Commerce (now PNB), Sarva Priya Vihar, New Delhi, since 1988, into which funds were deposited by plaintiff No. 3 and others from time to time. These funds were purportedly used for the acquisition of properties in Delhi, Rajasthan, and Haryana. The plaintiffs have further pleaded that the family operated joint businesses over the years, and that the income derived



from such ventures was consistently treated as joint family funds used for family welfare and investment.

5. In the backdrop of the above facts, the plaintiffs allege that the defendants, particularly defendant No. 1, have now resiled from the understanding and are attempting to deal with the suit properties as their exclusive assets. The present suit has, therefore, been instituted for declaration, partition, and other reliefs, asserting a continuing cause of action arising from the alleged breach of the MOUs/Family Settlements.

6. Upon listing of the matter on 26.05.2025, Mr. Mukesh Kumar Verma, learned counsel for defendant No. 1, raised objections regarding the presentation and validity of the plaintiff's *vakalatnama*. Time was granted to rectify the same. Thereafter, on 04.07.2025, learned counsel further objected to the maintainability of the suit itself and submitted that he would be representing all defendants. The Court permitted ten days to file a formal application incorporating the objections.

7. Pursuant thereto, an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) was filed by defendant No. 1 seeking rejection of the plaint on various grounds, including limitation, lack of territorial jurisdiction, bar under Section 34 of the Specific Relief Act, 1963, non-joinder of necessary parties, insufficient court fee, res judicata, and absence of a cause of action.

8. The said application was heard on 18.08.2025 and 21.08.2025, when submissions on behalf of defendant No. 1 were advanced. In response, Mr. Ashish Mohan, learned senior counsel appearing for the plaintiffs, addressed



the Court on 02.09.2025 and 15.09.2025. On the same date, Mr. Verma made his rejoinder submissions and also placed on record a compilation of judgments and a written note in support of the application.

9. The matter is now at the stage of consideration and adjudication of the application filed under Order VII Rule 11 CPC.

**Submissions of Parties**

10. By way of the application under Order VII Rule 11 of the CPC, the following broad submissions have been made by Mr. Mukesh Kumar Verma, learned counsel for the defendants:

- (i) The suit/plaint is barred by the law of limitation;
- (ii) The suit/plaint is liable to be rejected as being barred by law under the provisions of Section 34 of the Specific Relief Act, 1963, as no suit for declaration is maintainable where the plaintiff does not seek further relief in addition to a mere declaration of title;
- (iii) The suit is hit by the principle of res judicata and is, therefore, liable to be rejected;
- (iv) No proper court fee has been paid, and the suit has not been properly valued;
- (v) The Court has no territorial jurisdiction to decide the suit;
- (vi) The statutory compliance of Order VII Rule 15 of the CPC and Chapter III Rule 2 of the Delhi High Court (Original Side) Rules, 2018, has not been made, and the same is vexatious and without any



cause of action;

(vii) The necessary parties have not been impleaded, and the suit is therefore barred by law for non-joinder of necessary parties;

(viii) Intentional misleading submissions and concealment of vital facts are apparent, and reliance cannot be placed on unregistered documents, i.e., the MoU dated 18.02.2020;

(ix) No cause of action for rendition of accounts exists, as no details have been given, and the same is barred by limitation, etc.

10.1. Qua the aforesaid aspects, from the application, the following broad averments can be drawn:

**10.2. On Limitation**

- The suit is ex facie barred by limitation, as the plaintiffs seek declarations concerning three MOUs dated 18.02.2020, asserting them to be legal, valid, and binding.
- As per Article 58 of the Limitation Act, 1963, the limitation period for seeking declaratory relief is three years. The present suit was filed only on 03.05.2025, which is over five years from the date of the MOUs. Even after accounting for the COVID-19 exclusion period (March 2020 – March 2022), the suit remains time-barred.
- The plaint fails to disclose how limitation is saved. There is no averment of any fresh cause of action, acknowledgment, or denial of the MOUs by the defendants that could restart or extend the limitation period.



### 10.3. Bar Under Section 34 of the Specific Relief Act, 1963

- The suit is also barred under the proviso to Section 34 of the Specific Relief Act. A party cannot seek declaratory relief while omitting consequential relief when such further relief is available.
- The plaintiffs claim ownership over 43 properties listed in Schedule I, but have not sought possession of these immovable assets. Many of these properties are registered in the names of defendant Nos. 1 and 4, and the plaintiffs have not pleaded any existing possession.
- In fact, registered sale deeds and documents at pages 590–1212 demonstrate that possession lies with the defendants. The Local Commissioner's report in CS DJ 4069/2024 (page 234) confirms defendant No. 1's exclusive possession over the Chandan Holla property.
- The absence of a prayer for possession is fatal under the proviso to Section 34, and the suit is, therefore, not maintainable.

### 10.4. Bar of *Res Judicata*

- The present suit is barred by *res judicata* under Section 11 CPC. This is the fourth attempt by the plaintiffs to agitate rights in respect of the same properties.
- Earlier suits CS DJ 1455/2024 (withdrawn on 17.09.2024) and CS DJ 4069/2024 (rejected on 03.04.2025) involved the same issues, parties, and particularly the Chandan Holla property forming part of the second MOU.



- In CS DJ 4069/2024, this Court held that defendant No. 1 was in possession, and that order has attained finality. The present suit is a clear case of re-litigation and constitutes abuse of process.

#### **10.5. On Territorial Jurisdiction**

- The properties are located in Delhi, Rajasthan, and Haryana (Gurugram, Mewat, Faridabad). The plaintiffs are not in possession and have not sought possession, which is a key requirement under Section 16 of CPC.
- As per Section 16 CPC and Order II Rule 2, suits regarding immovable property must be filed in the court where the property is situated. The plaintiffs cannot invoke personal obedience to artificially create jurisdiction.
- Filing the suit in Delhi, despite the multi-state nature of the properties, appears to be a strategy to bypass jurisdictional norms. Hence, the suit is not maintainable and falls under Order VII Rule 11(a) and (d) CPC.

#### **10.6. Absence of Cause of Action**

- The plaint discloses no cause of action. Reliefs 'a' and 'b' are premised on three unregistered MOUs dated 18.02.2020. Under Section 49 of the Registration Act, such unregistered documents are inadmissible for asserting rights in immovable property.
- The plaintiffs also do not possess the original MOUs, and contradict their own submissions made in CS DJ 4069/2024, where





they had claimed that the originals were filed. Errors in dates (e.g., page 143) further undermine the authenticity of the documents.

- Prayer 'd' (rendition of accounts) is vague, unsubstantiated, and lacks specific pleading. No details are provided as to which properties were sold, when, and for what consideration. This renders the prayer untenable in law.

10.7. Learned counsel for the defendants, Mr. Verma, has conclusively relied upon a series of judicial pronouncements to substantiate the various pleas raised in the application seeking rejection of the plaint. In support of the contention that the plaint discloses no cause of action and is based on vexatious and false pleadings, Mr. Verma cited the landmark decisions in *T. Arivandandam vs. T.V. Satyapal & Ors*<sup>1</sup>, *RBANMS Educational Institution vs. B. Gunashekar & Ors*<sup>2</sup>, and *I.T.C. Ltd. vs. Debt Recovery Appellate Tribunal & Ors*<sup>3</sup>. Further, to reinforce the plea that the suit is barred under Section 34 of the Specific Relief Act, reliance was placed on the decisions in *UOI vs. Ibrahimuddin & Anr.*<sup>4</sup>, *Meharchand Das vs. Lal Babu Siddiqui*<sup>5</sup>, *Vinay Krishna vs. Keshav Chandra Anr.*<sup>6</sup>, and *Ram Saran & Anr. Vs. Smt. Ganga Devi*<sup>7</sup>. The bar of *res judicata*, forming a fundamental aspect of the defence, was supported by reference to *Daryao Singh vs. State of U.P. & Ors*<sup>8</sup>, *SBI vs. Gracure Pharmaceutical Ltd.*<sup>9</sup>,

---

<sup>1</sup> 1977 SCC Online SC 286

<sup>2</sup> 2025 SCC Online SC 793

<sup>3</sup> 1998(2) SCC 70

<sup>4</sup> (2012) 8 SCC 148

<sup>5</sup> (2007) 14 SCC 253

<sup>6</sup> AIR 1993 SC 957

<sup>7</sup> (1973) 2 SCC 60

<sup>8</sup> 1961 SCC OnLine SC 21

<sup>9</sup> 2014 (3) SCC 595



***M/s Raptakos Brett & Co. Ltd. vs. Ganesh Property<sup>10</sup>, and N.V. Srinivasa Murthy & Ors. vs. Mariyamma (D) by LRs<sup>11</sup>.***

10.8. Moreover, the absence of liberty from the earlier Court to file a fresh suit was buttressed by the ruling in ***University of Agriculturist Sciences vs. Smt. Saroj Gupta<sup>12</sup>***, thereby rendering the present suit legally untenable. On the issue of inadequate court fees, reliance was placed on ***Shamsher Singh vs. Rajender Prasad & Ors.<sup>13</sup>***, while the lack of territorial jurisdiction, owing to the properties being situated in Rajasthan and Haryana, was supported by the authoritative decision in ***Harshad Chiman Lal Modi vs. DLF Universal and Ors.<sup>14</sup>***. The objection concerning non-joinder of a necessary party was grounded in the judgment of ***Executive Officer Arulmigu Chokkanatha Swamy Koil Trust. Virudhunagar vs. Chandran and others<sup>15</sup>***. Additionally, to highlight that no relief can be granted on the basis of unregistered documents, reference was made to ***Deepak Arora vs. Rashmi @ Himanshi Goel<sup>16</sup>***. Finally, the absence of necessary pleadings in support of prayer (d), along with procedural infirmities such as lack of proper verification of the plaint under Order VI Rule 15 CPC and Rule 2 of Chapter III of the Delhi High Court (Original Side) Rules, 2018, were emphasized through the judgment in ***Anathula Sudhakar V.P. Buchi Reddy (Dead) by L.Rs & Ors.<sup>17</sup>***, thereby attempting to present a comprehensive basis for the rejection of the plaint.

---

<sup>10</sup> 2017 SCC Online SC 1047

<sup>11</sup> (2025) 5 SCC 548

<sup>12</sup> (2021) 16 SCC 768

<sup>13</sup> AIR 1973 SC 2384

<sup>14</sup> AIR 2005 SC 4446

<sup>15</sup> (2017) 3 SCC 702



11. *Per Contra*, Mr Ashish Mohan, Senior Advocate, learned counsel appearing for the plaintiff made the following submissions:-

11.1. At the outset, it is submitted that the application is misconceived and deserves to be dismissed. According to him, the ground of *res judicata* is not applicable in view of the provisions of Order VII Rule 13 of the CPC, whereby the rejection of a plaint does not preclude the presentation of a fresh plaint. Reliance is placed on behalf of the plaintiff on the cases of ***Indian Evangelical Lutheran Church Trust Association vs. Sri Bala & Co.***<sup>18</sup>. and ***Keshav Sood vs. Kirti Pradeep Sood and Ors.***<sup>19</sup>.

11.2. Moving forward, with respect to the court fee, it is submitted that the averments made in the plaint are to be seen, and it is only when ouster or exclusion from the property is proved that the question of *ad valorem* court fee can be raised. When the plaintiffs have expressly stated in the plaint that they are in joint and constructive possession of the suit properties, only the averments are to be seen and not the defence of the defendant. Reliance is placed on the decision in the case of ***Geeta Tandon vs. Dr. Sunil Gomber & Anr***<sup>20</sup>.

11.3. Additionally, as to the question of territorial jurisdiction, it is submitted that under Section 17 of the CPC, such a suit is permissible to be filed when the properties are situated within the jurisdiction of different Courts. Reliance is placed on the decision in the case of ***Shivnarayan (D) by***

---

<sup>16</sup> 2021 SCC OnLine Del 5360

<sup>17</sup> 2008 (4) SCC 594

<sup>18</sup> 2025 SCC OnLine SC 48

<sup>19</sup> 2023 (6) ALT 36

<sup>20</sup> 2024 SCC Online Del 1812



***L.R.s vs. Maniklal (D) thr. L.R.s & Ors*<sup>21</sup>.**

11.4. In relation to the admissibility of unregistered MoU/Family Settlement and its justification, it is submitted that the MOUs/Family Settlements are documents in which a family understanding is put into writing, and the oral settlement, when recognized by way of writing, does not require registration. Reliance is placed on the decisions in the cases of ***Jinesh Jain vs. Amit Jain*<sup>22</sup>, *Himani Walia vs. Hemant Walia*<sup>23</sup>, and *Kale & Ors. vs. Deputy Director of Consolidation & Ors*<sup>24</sup>.**

11.5. Moreover, it is submitted that all the brothers are equally entitled to their shares in the suit properties, and the cause of action has clearly been delineated in paragraph No. 70, which for the time being has to be considered. As regards non-seeking of the relief of possession, it is stated that the plaintiffs have claimed their physical as well as constructive possession, and the ground is not available to be raised by the defendants.

11.6. Furthermore, the instant suit is not a suit simpliciter for declaration but also claims the consequential relief of partition; therefore, the suit is not hit by the provisions of Section 34. Reliance is placed on the decision in the case of ***Ranjeet alias Bhaiyu Mohite vs. Nandita Singh & Ors*<sup>25</sup>.**

11.7. Lastly, addressing the objection regarding non-joinder of necessary parties, it is submitted that all the necessary parties have been impleaded; however, the same will have to be examined during the course of trial. To

---

<sup>21</sup> 2020 (11) SCC 629

<sup>22</sup> 2025 SCC OnLine Del 900

<sup>23</sup> 2022 SCC Online Del 893

<sup>24</sup> 1976 (3) SCC 119



justify the same, reliance is placed on the decision in the case of *Delhi Gymkhana Club Limited & Ors. vs. Alok Mehndiratta & Ors*<sup>26</sup>.

### Analysis

12. I have considered the submissions made by learned counsel for both the parties and also perused the record.

### Limited Scope of Order VII Rule 11 CPC

13. Before proceeding to the analysis of the facts of the case, it is important to briefly discuss the scope of Order VII Rule 11 of CPC. Although, the principles governing the scope of an application of this nature have been a subject matter of various pronouncements, it is imperative to note that at this stage, while deciding an application under Order VII Rule 11 CPC, the Court is required to examine only the averments made in the plaint and in a comprehensive sense by looking at the plaint as a whole, and not in isolation. The scope of such an application is limited solely to determine whether, on the basis of the plaint as it stands and on a comprehensive reading thereof, a cause of action is disclosed or if the suit is barred by any law. No reference can be made to the written statement or any defence raised or which may be raised in the future, as the assessment must be confined strictly to the pleadings of the plaintiffs.

14. This Court in *Meena Vohra v. Master Hosts (P) Ltd*<sup>27</sup>, had an occasion to discuss the underlying objective of order VII Rule 11 CPC and

---

<sup>25</sup> 2021 SCC Online MP 3410

<sup>26</sup> 2018 SCC Online Del 6401

<sup>27</sup> 2025 SCC OnLine Del 1758



held:

*“11. The real object of Order VII Rule 11 CPC is to keep out irresponsible lawsuits from the Courts and it provides for an independent remedy for the defendant no.1/applicant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The Supreme Court in Sopan Sukhdeo Sable v. Asstt. Charity Commr.9, held as under: “17. .. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.*

\*\*\*

*20....Rule 11 of Order 7 lays down an independent remedy made available to the defendant no.1/applicant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant no.1/applicant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiff/non-applicants from presenting a fresh plaint in terms of Rule 13.””*

15. Furthermore, in ***Hardesh Ores (P) Ltd. v. Hede & Co.***<sup>28</sup> the Supreme Court has held, as noted above, that it is not permissible to cull out a sentence or a passage and to read it in isolation while considering an application under Order VII Rule 11 CPC. 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. Therefore, a roving inquiry akin to appreciation of evidence is not contemplated at the stage of Order VII Rule 11 of the CPC. As a thumb rule, in an application under Order VII Rule 11 CPC, the Court is not required to adopt a pedantic approach, and it is not the presence, but rather the absence of cause of action which is to be shown with certainty in order to reject the plaint. If the cause of action is broadly made out from the averments, the certainty thereof could only be tested during trial and the plaint cannot be rejected on this ground.

### **On the Plea of Limitation**

16. The defendants argue that the suit is barred by limitation under Article 58 of the Limitation Act, 1963. However, whether the plaintiffs' claims are barred or whether any part of the cause of action is saved by the COVID-19 exclusion period are matters that necessitate evidence. Furthermore, the precise point from which the counting of the limitation period shall commence is also dependent upon various factors such as express or implied denial of rights under the MoUs, acknowledgement, etc., and it cannot be assumed to be the date of purported execution of the MoUs. Considering that even by way of the present application, there has been a denial of the MoUs by the defendants, the plaintiff's claim of a continuous cause of action could also be a matter of examination before this Court. Thus, the question is a nuanced factual question and cannot be summarily concluded at the Order VII Rule 11 stage.

---

<sup>28</sup> (2007) 5 SCC 614



17. In *P. Kumarakurubaran v. P. Narayanan & Ors*<sup>29</sup>, the Supreme Court reiterated the settled legal position that the question of limitation, when it involves disputed facts, cannot be adjudicated at the stage of an application under Order VII Rule 11 of the CPC. The Court held that if the issue of limitation is a mixed question of law and fact, it necessarily requires examination as to when the cause of action arose, which could only be determined after the parties have been given an opportunity to lead evidence. Consequently, such matters cannot be decided summarily by merely relying on the averments in the plaint or the contentions in the application seeking rejection.

18. In the present case, the plaintiffs have asserted continued rights over jointly held properties and allegations of exclusion by the defendants. These averments, at least on the face of it, do not justify a finding that the suit is *ex facie* barred by time.

**On Section 34 of the Specific Relief Act**

19. Additionally, the defendants also contend that the suit is not maintainable under Section 34 of the Specific Relief Act, as the plaintiff has not sought possession. However, this is a suit for partition, which inherently includes a claim for possession. The plaintiffs' case is founded on the jointness of the suit properties and implicit therein is the element of jointness of possession, constructively or otherwise. Therefore, in the absence of any clear counter evidence of ouster of the plaintiffs from possession, which could only be led at the appropriate stage, the plaint

---

<sup>29</sup> 2025 SCC Online SC 975





cannot be faulted for not explicitly raising a claim of possession.

20. Pertinently, objections under Section 34 of the Specific Relief Act are to be decided at the time of final adjudication of the suit. Reference can be made to the decision of the Supreme Court in ***M/s Frost International Limited v. M/s Milan Developers and Builders (P) Limited &Anr***<sup>30</sup>. The relevant portion of the said decision reads as under:

*“The proviso to Section 34 states that no court can make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The said question will have to be considered at the time of final adjudication of the suit as the question of granting further relief or consequential relief would arise only if the court grants a declaration. If the plaintiff is unsuccessful in seeking the main relief of declaration, then, the question of granting any further relief would not arise at all. Therefore, omission on the part of the plaintiff in praying for further consequential relief, would become relevant only at the time of final adjudication of the suit. Hence, in view of the above, the plaint cannot be rejected at this stage by holding that the plaintiff has only sought declaratory reliefs and no further consequential reliefs.”*

21. Furthermore, a suit should not be dismissed merely on account of curable defects, such as the omission to make a specific prayer for possession, without affording the plaintiff an adequate opportunity to amend the plaint. The intent of the law in this regard is only to ensure that comprehensive suits are brought before the Courts for a wholesome adjudication of the rights and liabilities. The intent is not to deny a fair adjudication of rights on mere procedural infirmities, which could be corrected in accordance with the procedure devised by law. Such procedural objections are more appropriately considered at the stage of final disposal,

---

<sup>30</sup> 2022 INSC 380



as defects under Section 34 of the Specific Relief Act can be rectified by amending the plaint to include the necessary consequential reliefs, provided such amendment is made within the prescribed limitation period. In this context, reference may be made to the decision of the Supreme Court in *Venkataraja v. Doureradjaperumal (D) Thr. LRs.*<sup>31</sup>

22. A similar view has recently been taken by this Court in **CS(OS) 420/202**, titled *Sh. Rajesh Sharma v. The Sub-Registrar - V A (Hauz Khas)*. The relevant portion of the judgment is reproduced below for reference:

*“21. As far as the objection under Section 34 of the SRA, in respect of the prayer for declaration that the plaintiff is entitled to joint possession of the suit property, is concerned, it is suffice to note that the same cannot be a ground for rejection of the plaint.”*

### **On Res Judicata**

23. Concerning the matter of *res judicata*, it is firmly established in law that this doctrine cannot be considered at the stage of Order VII Rule 11, as it involves a comparative factual examination of the earlier suit, previous judgments, subsequent suit, etc. This principle has been upheld by the Supreme Court in *Keshav Sood*. Relevant paragraph of the judgment is reproduced as below:

*“6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on*

---

<sup>31</sup> 2014 (14) SCC 502



*merits.”*

24. This position was reaffirmed in ***Pandurangan v. T. Jayarama Chettiar & Anr***<sup>32</sup>, where the Court considered and relied upon the judgment in ***Keshav Sood***. It reiterated that *res judicata* cannot be decided merely based on assertions in an Order VII Rule 11 application. The Court held that identifying the similarity in causes of action and issues between two suits requires a detailed examination of the pleadings, documents, and judgments in the earlier proceedings, something that must be undertaken during trial. As also observed in ***V. Rajeshwari v. T.C. Saravanabava***<sup>33</sup>, *res judicata* cannot be based on speculation or inference.

25. Further clarity on the scope of this objection has been provided by the Supreme Court in ***Srihari Hanumandas Totala v. Hemant Vithal Kamat***<sup>34</sup>. In the said case, the Court underscored that the adjudication of a *res judicata* plea falls outside the limited purview of Order VII Rule 11 CPC, since it necessarily requires analysis of the pleadings, issues, and decision in the “previous suit”. The Court held:

*“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:*

*25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.*

*25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.*

*25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the “previous suit” is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title;*

---

<sup>32</sup> 2025 SCC Online SC 1425

<sup>33</sup> 2004 (1) SCC 551

<sup>34</sup> 2021 SCC OnLine SC 565



*and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.*

*25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues, and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."*

26. Thus, the reliance placed by the defendants on previous proceedings, including CS DJ 4069/2024 and CS DJ 1455/2024, would necessitate examination of the issues decided therein, the finality of orders, and whether the same cause of action is involved, all of which must await trial. At this stage, the plaint does not disclose any such express bar, and hence, rejection under Rule 11(d) CPC is not warranted.

### **On Territorial Jurisdiction**

27. The objection regarding territorial jurisdiction also fails at this stage. The plaintiffs have invoked Section 17 of the CPC, which allows suits to be filed where part of the property is situated, or where the cause of action arises.

28. Whether the plaintiffs have artificially created jurisdiction by choosing Delhi over other competent forums is a question of fact, not determinable at this stage. The judgment in ***Harshad Chiman Lal Modi***, relied upon by the defendants, pertains to the final determination of jurisdiction, not preliminary scrutiny under Order VII Rule 11.

### **On Cause of Action and Construct of the Suit**

29. The plaint, when read holistically, discloses a cause of action. The plaintiffs assert joint ownership under family arrangements (albeit



unregistered), claim exclusion by defendants, and seek partition, declaration, and rendition of accounts.

30. The objections raised by the defendants concerning the unregistered nature of the MOUs are relevant to evidentiary admissibility, and not maintainability. The MoUs in question merely constitute a part of the evidence, which may or may not be admissible or reliable, and they must be seen in addition to the averments of the plaintiffs who would also depose their oral evidence during trial. Eventually, even if the MoUs are found to be inadmissible, it could not be observed at this threshold stage that other evidence of the plaintiffs would also completely fail to make out any case for relief in the future. The said determination could only be based on an appreciation of the entire evidence, including oral and documentary, after examination and cross-examination on oath. The legal presumption that every averment in the plaint is true must be applied at this stage. The Supreme Court in *T. Arivandandam* was dealing with a manifestly vexatious and sham proceeding. That test is not satisfied here.

### **On Non-Joinder of Parties**

31. It is trite that the non-joinder of necessary parties is not a ground for rejection under Order VII Rule 11 CPC. Supreme Court and this Court have repeatedly held that such issues are to be resolved during trial, based on evidence and framing of issues.

32. Further, moving on to the judgments relied upon by the defendants, while significant in their own factual contexts, suffice to note that they are distinguishable at the threshold stage of Order VII Rule 11 CPC. For



instance, the decisions in *T. Arivandandam*, *RBANMS Educational Institution*, and *ITC Ltd.* involved cases wherein the suits were *ex facie* vexatious, frivolous, or wholly devoid of any cause of action. In contrast, the present suit discloses substantial factual disputes, including claims of joint ownership, family settlement, and constructive possession, which cannot be brushed aside without a full trial. Likewise, the decisions in *Ram Saran* and *Vinay Krishna* interpret the proviso to Section 34 of the Specific Relief Act, but do not support rejection of the plaint at this stage, especially when the plaintiffs assert that the suit is not merely declaratory but also seeks partition, a consequential relief inherently involving issues of title and possession that require adjudication on evidence.

33. Similarly, the reliance placed by the defendants on *Daryao*, *SBI v. Gracure Pharmaceutical Ltd.*, and *N.V. Srinivasa Murthy* to raise the bar of *res judicata* is misplaced at this stage. Those judgments deal with suits that had been fully tried and finally adjudicated, unlike the present matter, where the plea of *res judicata* is contested and cannot be determined solely from the averments in the plaint without reference to the records of the prior proceedings. Further, the reliance on *Deepak Arora* is also distinguishable. That case dealt with the admissibility of unregistered documents, not with the maintainability of a suit itself. Here, the plaintiffs have not sought to enforce the MoUs as independent contracts; rather, they are relied upon as part of the factual background underpinning the plaintiffs' claims. The question of admissibility of such documents is evidentiary in nature and must be decided at trial, not at the stage of Order VII Rule 11 CPC.

34. Conclusively, having perused the pleadings made in the plaint and



having considered the nature of the objections, which are sought to be raised at the stage of issuance of summons itself, this Court is of the considered opinion that the plaint, at this stage, cannot be rejected. The underlying conditions for rejection of the plaint are not established in the facts and circumstances of the case.

35. However, liberty is granted to the defendants to raise all the objections during the trial, which shall be considered strictly in accordance with the law, uninfluenced by the observations in the present order.

36. Accordingly, application stands dismissed being devoid of merits.

**CS(OS) 348/2025, I.A. 13417/2025 and I.A. 13418/2025**

1. In view of the aforesaid, let the plaint be registered as a suit. Summons be issued to the defendants by all permissible modes on filing of process fee. An affidavit of service be filed within two weeks.

2. The summons shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.

3. The plaintiff is at liberty to file replications thereto within thirty days after filing of the written statements. The replications shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.

4. It is made clear that any unjustified denial of documents may lead to



2025:DHC:8757



an order of costs against the concerned party.

5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

6. List before the concerned Joint Registrar for marking of exhibits on 15.12.2025.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**SEPTEMBER 26, 2025**

*Nc/sph*