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

% ***Reserved on: 28th February 2025***
Pronounced on: 02nd April 2025

\+ **CS(OS) 20/2022 & CC 15/2023 I.A. 721/2022**

NARESH GUPTA & ANR. .....Plaintiffs
Through: Mr. A. Maitri, Ms. Radhika Chandrashekhar and Mr. Arnav Mudgal, Advocates.

versus

SH NIKHIL @ NIKHIL KUMAR & ORS. .....Defendants
Through: Mr. M.A. Khan, Adv. for D-1 with D-1 in person.
Mr. Vikas Gautam, Adv. for D-3 & 4.
Ms. Vrinda Kapoor, Ms. Saumya Soni, Mr. Vishal Vaid, Advocates for D- 4/DDA (*through VC*).

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

I.A. 17101/2023 (*Application under Order VII Rule 11 Read with Section 151 CPC*)

1. This application has been filed, under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**'), by defendant no. 1. It is contended by defendant no. 1 that the suit filed by the plaintiffs is based upon a forged Will dated 17th February 2002.

2. The plaint was filed seeking a decree of partition, declaration and injunction in respect of rights in property No. *144, Deepali, Pitampura Delhi- 110034.* ('**Suit Property**')

Submissions by counsel for defendant no. 1

3. The application is focused on the fact that reference to this Will was not made previously, and conspicuous by its absence, in either of the following situations:

i. The first round of litigation initiated by plaintiffs and defendant no. 2 and 3, against the father of parties (*late Surendra Prakash Gupta*) and defendant No. 1. The plaintiffs and defendant no. 2-3 had claimed to be co-owners of the suit property and had filed a civil suit, being ***Suit No. 142/1995***, which was dismissed *vide* judgment and decree dated 28th November 1995.

ii. Against the said dismissal, an appeal was filed before the Court of the ADJ, which was also dismissed by judgment dated 4th July 2001.

iii. A second appeal was filed being, ***RSA No. 143/2001***, before this Court, which too was dismissed as withdrawn on 28th March 2008.

iv. *Late Surendra Prakash Gupta*, passed away on 12th December 2003. The plaintiffs and defendant nos. 2-3, filed an application to bring on record, his legal heirs, before this Court, being ***CM No. 3971/2004***, under Order XXII Rule 4 CPC. This application was dated 19th August 2004, but therein as well, there was no reference of the Will dated 17th February 2002.

v. Legal notices were served by the plaintiffs upon DDA and defendant no. 4, dated 20th November 2021, which also do not have a reference of the Will dated 17th February 2002.

vi. Another notice dated 14th December 2021, served upon DDA by the plaintiffs, does not have the reference of the Will of 2002.

4. Defendant no.1, therefore, contended that the Will dated 23rd May

1997, executed by *late Surendra Prakash Gupta*, which bequeathed the suit property upon defendant No. 1, was already in the knowledge of the plaintiffs.

5. It was submitted that it was highly impossible that during the pendency of the litigation against their late father, the Will dated 17th February 2002, could have been executed by him, favouring the plaintiffs.

6. It was also pointed out that upon demise of the father on 12th December 2003, the Will dated 17th February 2002, was never put before any government authority, for any purpose.

7. Further, it was contended by counsel for defendant no.1, that the suit, in any case, is time barred, as a decree of declaration is sought with respect to the Will dated 17th February 2002, and the cause of action arose on 12th December 2003, when their father passed away, thus the same would be barred in view of Article 58 of the Limitation Act, 1963.

Response by the counsel for plaintiffs

8. Counsel for plaintiffs submitted that defendant no. 1 only disclosed the Will of 1997, in 2021, when he went to the office of DDA. Defendant no.1 was silent for 20 years; therefore, the question of the Will of 2002 being brought forward, did not arise.

9. The suit against the father was filed in 1995 which ultimately ended up in the second appeal being withdrawn. Even during this time, there was no disclosure of the Will, by defendant no. 1.

10. Reference was made to the plaint, wherein it is stated in para no. 35, that the plaintiffs were never aware of the alleged Will dated 23rd May 1997, prior to November 2021.

11. Reference was also made to Order VII Rule 1 of CPC, to state that

the plaint ought to contain the particulars which constitute the cause of action and when it arose.

12. As per the plaintiff, the relevant facts relating to the cause of action have already been stated in the plaint and the question of it being dismissed Order VII Rule 11 of CPC, does not arise.

13. It was also contended that ***RSA No. 143/2001*** was dismissed as withdrawn in 2008, since there were no disputes amongst the family members regarding the said Will.

Rejoinder submissions by counsel for defendant no. 1

14. In rejoinder, counsel for the defendant no. 1 pointed out to para no. 17 of the plaint, where it has claimed that the plaintiffs' possession is continuous, uninterrupted, hostile, and adverse to defendant no. 1, since 1981.

15. Quite to the contrary, in para no. 22, it is stated that after the death of the father, the parties agreed to partition the suit property, but the same could not be done and "…..*plaintiff as well as defendant no.1 continued to enjoy the suit property as for their convenience, as per their actual possession over the suit property*".

16. It is stated that the since their father's death, defendant no. 1 has been on the ground floor of the property, while plaintiff no. 1 and 2 have been on the first floor and the second floor of the property.

17. Responding to the plaintiffs' contention that there was an oral family settlement, post the death of their father in 2003, Counsel for defendant no.1 pointed out that neither the application under Order XXII Rule 4 of CPC, moved in August 2004, or the order sheets of the ***RSA No. 143/2001***, till 2008, ever showed that there was some kind of a registered

Will of the year 2002 or that there had been an oral settlement between the parties.

Analysis

18. For the purpose of assessment of the contentions in respect of Order VII Rule 11 CPC, it may first be necessary to assess the plaint itself.

19. Plaintiffs nos. 1 & 2 and defendant nos. 1-3 are legal heirs of *late Surendra Prakash Gupta*.

20. Plaintiff No. 1 stated that they are in lawful possession of the first floor of the suit property, since 1981. Plaintiff no. 2 was in possession of the second floor of the suit property while defendant no.1 was in possession of the ground floor of the suit property.

21. It was contended that by Will dated 17th February 2002, 2nd floor of the property had been bequeathed in favor of defendant no.1.

22. Plaintiffs were challenging the mutation in the name of defendant no.1, sanctioned by the DDA, in respect of the suit property, as also, conveyance deed of 26th August 2021, in favor of defendant no.1.

23. It was stated that the mutation was on the basis of a Will dated 23rd May 1997, which they said was superseded, by Will dated 17th February 2002.

24. As per the Will dated 17th February 2002, the deceased had bequeathed the land and superstructure of the suit property to the three sons, giving ground floor to the plaintiff no.2, the first floor to the plaintiff no.1 and the second floor to defendant no.1.

25. All the common utility areas were to be used and maintained, jointly. In the event of sale of the property, all the three sons, including the heirs and descendants, were entitled to 1/3rd share each.

26. Partition was, therefore, sought on this basis that an earlier ***Suit No. 142/1995*** was filed by the plaintiffs against defendant no.1, as well as, against the late father, seeking restraint from selling, transferring and alienating the suit property.

27. Plaintiffs were alleging that the alienation was a threat to the rights of plaintiffs. The suit was, however, rejected on 28th November 1995, the appeal being ***RFA No. 5/1996***, being dismissed on 4th July 2001 and the ***RSA No. 143/2001***, itself being withdrawn on 28th March 2008.

28. It was contended that the matter was resolved between the family, in 2002, when the Will was executed. Therefore, the said proceeding had been withdrawn.

29. Plaintiffs claimed that they came to know about the '*1997 Will*', relied upon by defendant no.1, only in November 2021, from a local property dealer, in relation to the mutation which had been preferred by defendant no.1.

30. The plaintiffs, therefore, claim that they inspected the records at DDA and realized that they had been defrauded by the defendant no. 1, who, despite knowledge of Will dated 17th February 2002, had suppressed it and sought mutation, on the basis of the Will dated 23rd May 1997.

31. Post the mutation, the conveyance deed had also been executed dated 26th August 2021.

32. The assertions made by plaintiffs in respect to the cause of action seem unacceptable and vexatious to this Court, for *inter alia* the following reasons:

i. That while the Will dated 17th February 2002 is an unregistered Will, the Will dated 23rd May 1997 is a registered Will (*before the*

Sub -Registrar 6A, Delhi).

ii. The plaintiffs themselves, in para 32 of the plaint, stated that they did not dispute the legality and validity of the said Will, dated 23rd May 1997, as the same was admittedly executed during the pendency of ***RFA No. 5/1996*** and the rights of the parties were under dispute before Court, in the first appeal against the dismissal of the suit.

iii. The reference to the, '*2002 Will*', did not crop up at any time in the litigation between the parties, post 2002, when the ***RSA No. 143/2001,*** was pending before the Courts. Perusal of the order sheets on record, (of ***RSA No. 143/2001*****)**, do not reflect any reference to an assertion by the plaintiffs, that there is a Will of 2002.

iv. Even after the death of the father in 2003 until the ***RSA No. 143/2001*** was withdrawn in 2008, there was no mention/application moved by plaintiffs, claiming that there was a Will of 2002, which had bequeathed one floor each, to the plaintiff nos. 1-2 and defendant no. 1.

v. Even after the death of the father, in the application moved under Order XXII Rule 4 CPC, for impleadment of the legal heirs, there was no mention of the 2002 Will. This lack of reference becomes more critical considering that the plaintiffs themselves claim that they had knowledge of the '*1997 Will*'.

vi. In order to assess the plea of defendant no.1 that the suit is vexatious, it may be apposite to refer to the principles of Order VII Rule 11 CPC which have been usefully articulated in the decision

in ***Dahiben v. Arvindbhai Kalyanji Bhanusali*** (2020) 7 SCC 366, as follows:

> *"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.*
> *23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*
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> > *"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."*
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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.

…

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 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.

23.14. <u>The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial</u>, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action,

or that the suit is barred by any law, the court has no option, but to reject the plaint."

(emphasis added)

33. Essentially, even as per the plaint which asserts the claim on the basis of the '*2002 Will*', it will be seen that on an admission, that the '*1997 Will'* was existing and there was continuous litigation between the parties, there is no assertion by the plaintiff that they made an attempt to bring to the knowledge of the Courts, who were adjudicating on the *inter se* issues between the parties, the '*2002 Will*'.

34. More importantly, the vexatiousness of the suit is apparent from the circumstances which are mentioned by the testator, in the '*1997 Will*'.

35. In the '*1997 Will*', the testator mentions that the property is self-acquired and he had raised the whole superstructure from his own funds and resources, without any financial assistance from either of his two elder sons (*plaintiffs*); it was stated that his two daughters were married and residing with the families, but since the value of the properties had arisen, the two daughters and the plaintiffs were prevailed upon by greed and had overpowered him and proclaimed themselves to be part owners of the property. He states in his Will that the plaintiffs have forcibly occupied substantial portion of the property by taking advantage of his age and ailing condition and are liable to be evicted from the property. Further, he makes extensive assertions relating to the conduct of the plaintiffs with respect to his care.

36. In this regard the following paragraphs of the '*1997 Will*' may be instructive, to appreciate the context in which it was executed:

And Whereas my elder two sons have also been overpowered by the greed and they started harassing me and neglecting me for the same and they are guilty of neglecting their parents more particularly me as the property stands in my name. My said two sons forgot their duties towards their parents and filed a case against me claiming to be the part owners of the property though they are not concerned with the property in any manner whatsoever. I must be thankful to my above two sons and daughters that while claiming the property and filing a case they have not alleged that I their father is mentally derailed because I fear that they could / can stood to that extent in order usurp my only property which is lone source to provide me the ways and means for my survival / existence.

And Whereas my two sons Naresh and Naveen have forcibly occupied substantial portion / part of the property by taking advantage of my age and ailing condition and as such they are the unauthorized occupants and are liable to be evicted from the property in question. They are living in the said property at my will since the date they had filed the case against me and are liable for eviction. While forcibly occupying the portion of property they have taken physical possession of household goods and articles etc.

And Whereas the suit filed by them is an ample proof of the attitude and behavior of my sons. My said two sons instead of rendering a helping hand to their old aged parents have dared / ventured to drag me into the false and frivolous litigation.

And Whereas my two daughters have also joined them in their evil designs because of greed and they along with Naresh and Naveen are eagerly waiting for my death.

And Whereas the property no. 144, Deepali consists of ground floors, first floor and second floor. On the ground floor, I am residing along with my wife and my youngest son Sh. Nikhil and his family. The name of my wife is Smt. Padmavati. The first floor at present is in unlawful possession of my son Sh. Naresh who is residing therein along with his family. The second floor at present is in unlawful possession of my middle son Sh. Naveen who is residing there along with his family.

AND NOW THIS WITNESSES AS FOLLOWS:

1) My sons Sh. Naresh and Naveen and my two daughters Smt. Prabha and Meena shall have no right whatsoever in my property no. 144, Deepali, Pitampura. Nor they shall be entitled to share in any of my movable properties.

2) My son Sh. Nikhil shall become the absolute owner of my said property no. 144, Deepali and I Bequeath my said property in favour of my youngest son Sh. Nikhil.

3) My wife shall have a right to reside in the said property till she is alive and if my son Nikhil choses to dispose off this property my wife shall be entitled to residence in the property purchased by my son Nikhil from the funds of the property. However if my son Nikhil choses to dispose off this property he shall see and make all endeavours that the right of residence of my wife is protected first otherwise my wife can stop him from disposing the property.

4) My son Nikhil shall see that after my death he shall make / continue the efforts to get the property vacated from the unlawful possession of my two sons. It is my desire and wish and he shall leave no stone unturned for that.

37. It is quite inconceivable that having expressed such an emotion in a Will, (*registered during a litigation which was foisted upon the deceased, by the plaintiffs, claiming shares of the properties even during the lifetime of their father*), that the father would have changed his mind in 2002 and would have executed a Will which was unregistered, and revert to bequeathing one floor each to the respective sons, plaintiffs nos. 1, 2 and defendant no.1.

38. Even on the basis of the plaint itself, the case which is asserted by the plaintiffs is specious, implausible and, therefore, is liable to be rejected.

39. In addition, since declaration sought in the suit, is for the Will dated 17th February 2002 to supersede the previous Will of 23rd May 1997, the issue of limitation would come into picture.

40. As per Article 58 of the Limitation Act, 1963, a declaratory suit can be filed within three years from when the right to sue first accrues.

41. The plaintiff itself states in his plaint that the cause of action arose on the death of the father on 12th December 2003. Considering that they were aware of the '*1997 Will*', of which, they sought supersession and there was a history of litigation between the plaintiffs, on one hand, and the defendant no.1 on the other, the limitation period would have started running against them, to file a suit for declaration, in 2003. The suit having been filed in 2022 would, therefore, be barred by limitation.

42. The assertion by the plaintiffs that they were still pursuing the prior litigation till 2008, would not come to their assistance, since there was no reason, even after 2008, to not assert their rights and seek a declaration in 2022.

43. At no stage after the death of their father in 2003, did the plaintiff, to secure their rights asserted by them to parts of the property, take any steps to confirm the '*2002 Will*' in their favour, through a probate proceeding. A Will, as per them, executed superseding the '*1997 Will*', in a disputed situation, would have naturally invited an action to prove the *'2002 Will'* as authentic and valid, in which case the burden of proof would be on the propounders/plaintiffs. In this context, the decision of the Supreme Court in ***Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao*** reported as (2006) 13 SCC 433, may be adverted to, wherein the Court, while explaining the mode and manner in which execution of an unprivileged Will is to be proved, held as under:

> *"32. Section 63 of the Succession Act lays down the mode and manner of execution of an unprivileged will. Section 68 of the Evidence Act postulates the mode and manner of proof of execution of document which is required by law to be attested. It in unequivocal terms states that execution of will must be proved at least by*

> *one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.*
> *33. The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See Madhukar D. Shende v. Tarabai Aba Shedage and Sridevi v. Jayaraja Shetty.) Subject to above, proof of a will does not ordinarily differ from that of proving any other document*."
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> (emphasis added)

44. Moreover, even in the Will dated 17th February 2002, there is no specific reference of the previous Will, which was registered in 1997, though it does say that it is final and earlier Wills remain invalid and void.

45. The assertion by the plaintiffs that they only came to know about

the claim of the defendant no.1, when the mutation had been processed and conveyance deed had been executed, sounds untenable and unacceptable to this Court and cannot save the suit from the bar of limitation.

46. At this juncture, it is apposite to refer to the decision in ***Ramisetty Venkatanna v. Nasyam Jamal Saheb*** 2023 SCC OnLine SC 521, cited by the Counsel for the defendant no.1, where the Supreme Court observed as under:

> "*24. In the case of T. Arivandandam (supra) in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed as under:*
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> > *"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."*

25. In the case of Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137 in paras 11 and 12, this Court has observed and held as under:

"11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)"

26. In the case of Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174, this Court observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection

of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

27. In the case of Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation. Similar view has been expressed by this Court in the case of Raj Narain Sarin (supra).

28. Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, we are of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law."

(emphasis added)

47. In light of the aforesaid position of facts and law, both on the issue

of Order VII Rule 11(a) of CPC, as well as, Order VII Rule 11(d) of CPC read with Article 58 of the Limitation Act, 1963, the suit ought to be rejected.

48. Pending applications, if any, be rendered infructuous.

49. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 2, 2025 /RK/*kp*