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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 14th July, 2025*

+ CM(M) 1211/2025 & CM APPL. 40913-40914/2025
HIMANSHU GUPTA

.....Petitioner

Through: Mr. Abhishek and Mr. Sahil Sharma,
Advocates.

versus

BHARAT SHARMA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant No.5 before the learned Trial Court.
2. He is aggrieved by order dated 02.06.2025, whereby the learned Trial Court has disposed of two applications viz one application filed by the plaintiff under Order VI Rule 17 CPC, whereby his request to amend the plaint has been allowed and the other application moved by the petitioner herein whereby his request for rejection of the plaint has been declined.
3. The suit is, reportedly, at the initial stage, and the pleadings are yet not complete and issues have also yet not been framed. During course of arguments, learned counsel for petitioner showed copy of plaint (amended one) and copy of application moved under Order VI Rule 17 CPC. These be retained on record.
4. By virtue of application moved by the plaintiff under Order VI Rule 17 CPC, he was only making reference to one inadvertent typographical error in



prayer (b) of the plaint. In such prayer, the property was described as measuring 220 sq. yds and it was mentioned by the plaintiff in his application that the property was, in fact, measuring 110 sq. yds.

5. It was in the abovesaid factual background that the learned Trial Court has allowed such application.

6. Mr. Sahil Sharma, learned counsel for petitioner, submits that earlier also, the plaintiff had carried out amendment in the plaint and, granting repeated indulgence was not appropriate, being barred by principle of *res-judicata*.

7. When asked, he, in all fairness, submitted that in the earlier application, the request for amendment with respect to the prayer (b) was never taken.

8. The plaintiff has sought decree of partition of entire property measuring 220 sq. yds. and averred that he was having half undivided share in the same and thus has restricted his relief of possession to such half portion of 110 sq. yds. only. In view of the above, this Court does not find any merit in the contention made by the petitioner herein that the amendment was liable to be discarded outrightly.

9. As regards to application moved under Order VII Rule 11 CPC, the learned Trial Court has rightly recorded that even if it is assumed that there is some suppression of facts by the plaintiff, it *ipso facto* would not invite rejection of the plaint.

10. According to the petitioner herein, there are two difference properties which bear No. F-14 and F-15 and since there is suppression and concealment of the material fact, the suit needs to be rejected. The plaintiff is seeking partition of property which he describes as property bearing No. F-15 (presently, known as F-14). Thus, according to him, there is only one



property.

11. Needless to say, while considering any such application, the Court is, merely, required to confine itself to the broad averments made in the plaint and it is not required to see and adjudicate the defence of any defendant.

12. The guiding principles for deciding an application under Order VII Rule 11(d) CPC have been summarized as under by Hon'ble Supreme Court in *Prem Kishore v. Brahm Prakash*, (2023) 19 SCC 244:-

“(i) 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;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

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

(iv) 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.”

13. Whether the property has been described properly or not would be subject matter of trial and, if one goes through the averments made in the plaint, there would not be anything which may indicate that the suit is liable to be rejected.

14. Thus, mere allegation that there is concealment of material facts would not compel the Court to reject the suit. Such aspect can be appropriately appreciated by the learned Trial Court when the case is, eventually, put to trial. There is also no merit in the contention raised by the petitioner that the



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suit was not containing any *cause of action* and such aspect has also been appropriately considered by the learned Trial Court.

15. View thus, this Court does not find any illegality or perversity in the impugned order.

16. The present petition is dismissed in *limine*.

17. The pending applications, if any, stand disposed of.

(MANOJ JAIN)
JUDGE

JULY 14, 2025/ss/pb