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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 12.12.2025**

+ FAO(OS) 154/2025, CM APPL. 78772/2025 (Delay of 19 days in Re-filing the appeal), CM APPL. 78773/2025 (Ex.), CM APPL. 78774/2025 (Ex. from advance service of the respondents) & CM APPL. 78775/2025 (Stay)

ABDUL NASIR KHATRI & ANR.Appellants

Through: Mr. Mukesh Kumar Verma,
Advocate.

versus

FAZLU REHMAN KHATRI & ORS.Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

% **JUDGEMENT (ORAL)**

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Appellants/Defendant Nos. 1 & 4 under Order 43 of the Civil Procedure Code, 1908, [“CPC”] read with Section 10 of the Delhi High Court Act, 1966, assailing the Order dated 26.09.2025 [“**Impugned Order**”] passed by the learned Single Judge in CS(OS) No. 348/2025 titled as “*Fazlu Rehman Khatri & Ors. v. Abdul Nasir Khatri & Ors.*”. By way of the Impugned Order, the learned Single Judge dismissed the application under Order VII Rule 11 of the CPC.



2. Hereinafter, for the sake of clarity, the parties shall be referred to in the same manner as they have been arrayed in CS(OS) No. 348/2025.

3. While filing the application being I.A. No. 17271/2025, under Order VII Rule 11 of the CPC, in CS(OS) No. 348/2025, Defendant Nos. 1 & 4 have prayed for the following relief:

“a) Allow the application of the applicant and reject the plaint/suit of the plaintiff.

Pass any other order(s) as this Hon’ble Court deem fit and proper in the facts and circumstances of this case.”

4. The parties to the said suit are members of the same family. Late Sh. Abdul Rehman Khatri had six sons, who are parties to the suit, and Defendant No. 4, Ms. Saba Nasir Khatri, is the daughter of Defendant No. 1, Mr. Abdul Nasir Khatri.

5. It is the case of the Plaintiffs herein that the properties were jointly purchased.

6. The rejection of the plaint has been sought on the ground that the Plaintiffs have not produced the original copies of three memorandums of family settlement dated 18.02.2020, and the reliance has been placed upon the photocopies thereof.

7. It is also claimed that the Plaintiffs have not deposited the *ad valorem* court fee and have also not sought any consequential relief.

8. This Court has considered the submissions made by the parties.

9. Order VII Rule 11(a) of CPC enables the Court to reject a Plaint where no cause of action is disclosed. In the present case, the Plaint does disclose a cause of action, and the requirement of such disclosure stands satisfied by the Plaintiffs, as is evident from para 70 of the Plaint, which reads as under:



“70. That the cause of action for filing present suit firstly arose in 1983 when properties were purchased in the name of the parties jointly or individually with an oral understanding that those properties will be divided equally among the brothers. That cause of action further arose on 5th April, 1988 when agreement executed between the parties and they mutually agreed to indulge into purchase and sale of properties jointly. That cause of action arose all the time when the properties were purchased in the joint names of the parties or in the individual name of defendant number 1 from known family funds. That cause of action arose all the time when the properties were purchased in the joint names of the parties or in the individual name of defendant number 1 from known family funds. That cause of action arose when the properties were purchased in the name of the parties and further in the name of defendant no.1 who has to hold the properties for the benefits of other brothers. The cause of action further arose when the properties were purchased in the name of defendants in trust for the benefits of other brothers i.e. plaintiffs herein. That the cause of action further arose when the properties mentioned in para nos.11 to 40/ in schedule- 1, were purchased. That cause of action further arose when all the plaintiffs used to transfer the consideration amount for purchasing the properties in the account of defendant no.1 as mentioned in para-No.42 of the instant suit. That cause of action further arose when a written Memorandum of Family Settlement dated 22.08.2013, followed by a 3 Family Settlements dated 18.02.2020 got executed by all the brothers thereby disclosing the shares of each other in respect of the suit properties mentioned in schedule 1. That the cause of action further arose on 04.09.2024 when the defendant created hindrance in the peaceful occupation of the suit property bearing Khasra No.108/1 (0-8), 126/2 (0-13), 126/4 (2-17) situated in the revenue estate of Village Chandanhula, Tehsil Mehrauli, New Delhi and the plaintiffs filed a complaint before SHO P.S. Fatehpur Beri, New Delhi. The cause of action further arose on 21.11.2024 when Defendant No.1 denied its validity and disclosed fraudulent transfers. The cause of action still continues to persist as the suit properties remain undivided and the plaintiffs' rights remain obstructed.”

10. With regard to the court fee, the Plaintiffs claim that the suit properties are in their constructive possession being co-owners, and they have sought partition thereof. Hence, the plaintiffs were not required to pay *ad-valorem* court fee on the valuation of their share of the property.



11. Defendant Nos. 4 & 5, if so advised, may seek to frame a distinct issue on the question of the deficient court fee, which will be decided along with the suit.

12. With regard to failure to seek consequential relief, it is noticed that the Plaintiffs have sought partition, entitlement to rendition of account, and declaration of equal share, i.e., 1/6 share, in the properties which form a part of the memorandums of family settlement dated 18.02.2020. Hence, it cannot be said that the Plaintiffs have failed to seek consequential relief.

13. It is a settled position of law that the relief of actual physical possession is inherent in the relief of partition once 1/6th share has been claimed.

14. Keeping in view the aforesaid facts and law, this Court finds no ground to interfere with the Impugned Order, and accordingly, the Appeal stands dismissed.

15. The present Appeal, along with pending application(s), if any, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
DECEMBER 12, 2025/v/her