



2025:DHC:8459-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18.09.2025

+ FAO(OS) 124/2022 & CM APPL. 47546/2022 (Dir.)

SHRI MANJEET SINGH JASSAL AND ANR.Appellants

Through: Mr. Ashish Dixit, Adv.
Mr. Anmol Jassai, Adv. for A-
2.

versus

SHRI ATMA SINGH AND ORSRespondents

Through: Mr. Bimlesh Kumar Singh, Ms.
Shattika Haldar & Mr.
Narendra Kumar, Adv. for R-1
& 2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

ANIL KSHETARPAL, J.

1. The present appeal has been preferred against the judgement dated 24.08.2022 passed by the Ld. Single Judge of this Court in CS(OS) 118 of 2018, whereby the Ld. Single Judge has dismissed the Application filed by the Appellants herein under Order VII Rule 11 r/w Section 151 of the **Code of Civil Procedure, 1908**¹, seeking rejection of the Plaint.

2. The parties herein shall be referred to in the same rank as they are arrayed in the original suit.

¹ CPC



3. The suit has been filed seeking partition, rendition of accounts, permanent injunction and declaration. Parties are Class I legal heirs of late Sh. Gurdial Singh, who passed away on 04.01.1998.
4. Defendant Nos. 5 and 7 assail the correctness of order passed by learned Single Judge while dismissing their application filed under Order VII Rule 11 read with Section 151 of the CPC.
5. It is a settled proposition of law that rejection of a plaint at the threshold is permissible only on the limited grounds expressly enumerated under the CPC.
6. Plaintiffs filed suit with the following prayers:
 - a) pass a decree of declaration, declaring the alleged registered WILL dated 25.09.1978, allegedly executed by late Shri S. Gurdial Singh is null and void and of no consequences;
 - b) pass a preliminary decree for partition in favour of the plaintiffs and against the defendants thereby partitioning the assets and properties of late Shri. S. Gurdial Singh, as detailed in para 4 of plaint, by metes and bounds and in case the property could not be so partitioned, in that event, the same be sold in auction and appropriate share in the monies so recovered be given to the co-owner with an option to purchase the same either singly or jointly with other co-owners who are parties to the suit.
 - c) pass the final decree for partition in terms of prayer (b) above in favour of the plaintiffs and against the defendants.
 - d) pass a decree of permanent injunction thereby restraining defendant his agents, nominees, attorneys, representatives, etc. from creating third party interest, parting with possession or carrying out any construction in the assets and properties of late Shri S. Gurdial Singh, as detailed in para 4 of the plaint.
 - e) pass a decree of rendition of accounts in favour of the plaintiffs against the defendants thereby directing the defendants to render accounts in respect of business and properties mentioned in para 4 of the plaint and decree of account to the extent of plaintiff's share in favour of the plaintiff and against the defendant along with interest @ 18% p.a.
 - f) Cost of the suit be awarded in favour of the plaintiffs and against the defendants.
 - g) Such further and other relief be also passed as to this Hon'ble Court may deem fit and proper under the facts and circumstances of the case including appropriate declaration as deemed necessary and appropriate by this Hon'ble Court."



7. Defendant Nos. 5 and 7 contend that the plaint discloses no cause of action and that the suit is barred by law by virtue of the **Prohibition of Benami Property Transactions Act, 1988**². They submit that several of the properties impugned in the suit are registered in the names of other defendants and not in the name of the late Sh. Gurdial Singh, and that no title deeds or other documentary proof have been produced to show ownership in his name, and therefore, the case does not fall within the exceptions under Section 2(9) of the Benami Act and is not maintainable.

8. With regards to the first objection that the suit is devoid of any cause of action, reference may be made to paragraph 35 of the plaint, which is reproduced herein below:

“35. That the cause of action for this suit arose on all diverse dates when late Shri S. Gurdial Singh purchased or developed the business, assets and properties, as mention in para 4 of the plaint and put in the common hotchpotch of the joint family property/business and intended to treat the same as joint family properties/business. It again arouse on all the dates when late Shri S. Gurdial Singh made it known to everyone, especially to his wife and children that all his assets, properties and business are for the benefit of all the members of his Jassal family. The cause of action again arose when late Shri S. Gurdial Singh died intestate and the assets and property of late Shri S. Gurdial Singh as detailed in plaint devolved unto the parties to the Suit. It again arose on diverse dates when the plaintiffs orally requisitioned the defendants for partition of the assets and properties of late Shri S. Gurdial Singh and rendition of account of the business of late Shri S. Gurdial Singh and the defendants avoided the same. On diverse dates when the plaintiff were deprived of their legitimate shares in the properties in the suit and when the same was mismanaged and/or dealt with in such manner to the detriment of the plaintiff and the defendants committed and continued to commit breach of trust in respect of the said properties. That the cause of action again arose on the death of late Shri Sher Singh on 01.07.2017. It again rose on diverse dates in August 2017, when the defendant No. 5

² Benami Act



and 7 tried to dispose of or to create third party interest in the assets, properties and business of late Shri S. Gurdial Singh. It again arose on 13.09.2017, when the plaintiff No. 1 addressed a legal notice to the defendant No. 5 and 7 to partition each and every assets and property of late Shri S. Gurdial Singh. The cause of action again arose when the defendant No. 5 and 7 send the dishonest reply dated Sept., 2017 to the aforesaid legal notice and denied the partition, as requested. The cause of action again arose on 19.02.2018 when the plaintiff No. 1 visited India and met the defendant No. 5 and 7 and requested them to partition the assets and properties of late Shri S. Gurdial Singh and the defendants dishonestly denied the same. It again arose on 20.02.2018, when the plaintiffs again met the defendants and requested for partition and rendition of account of the assets property and business of late Shri S. Gurdial Singh and the defendant No. 5 and 7 denied the same and threatened to dispose of and/or to create third party interest in the asset, properties and business of late Shri S. Gurdial Singh. The cause of action again arose on 07.03.2018, when it was transpired to the plaintiff No.2 that 3-4 persons along with a property dealer of the said area visited the joint family House No. 51-52, Main Bazar, Paharganj, Delhi to inspect the said properties and for negotiation for purchasing the said properties. The cause of action arose on the dates when the defendants clearly denied to partition and to tender the legitimate shares of the plaintiffs and also failed to render the account of the family businesses, as stated above; and the said cause of action is still recurring and continuing.”

9. From the foregoing, it is clear that in paragraph 35 of the plaint, the Plaintiffs have sufficiently set out the cause of action. They specifically averred that the property in dispute was purchased by their common ancestor, late Sh. Gurdial Singh (who passed away in 1998), and that upon its purchase, it was blended into the hotchpotch of the family estate, thereby acquiring the character of joint Hindu family property.

10. As regards the second submission of the learned counsel for the Appellants/ Defendant Nos. 5 and 7, it is pertinent to note that one of the reliefs claimed in the suit is the partition of the joint family property. The objection as to the maintainability of the suit under the



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Benami Act, can be adjudicated only after the parties are given an opportunity to lead evidence, particularly in view of the categorical assertion of the Plaintiffs that the property in question constituted joint Hindu family property.

11. This court is of the opinion that before exercising powers envisaged under Order VII Rule 11 of the CPC, the Court is expected to be absolutely certain that the plaint as put forth is liable to be rejected on the grounds enlisted in Order VII Rule 11 of the CPC. In absence thereof, it is not safe to reject the plaint.

12. Learned Single Judge, after examining the matter, dismissed the application and we do not find any ground to interfere in the Impugned Order.

13. Accordingly, the present appeal, along with pending application(s), if any, stands dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 18, 2025/v/kr