



2025:DHC:7377-DB



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

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***Judgment reserved on: 05.08.2025***

***Judgment delivered on: 28.08.2025***

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RFA(OS) 17/2024

SONIA JOKHANI

.....Appellant

Through: Mr. Sacchin Puri, Senior Advocate with Mr. Varun Jain, Mr. Navin Kumar, Mr. Rohit Pal, Mr. Sonu Kumar, Ms.Mehak Ghaloth and Mr.Priyanshu, Advocates

versus

JUGAL KISHORE JOKHANI & ANR. ....Respondents

Through: Ms. Tanishka, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

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

**SHANKAR**

### **JUDGEMENT**

#### **HARISH VAIDYANATHAN SHANKAR J.**

1. The present Appeal, instituted under Section 96 of the **Code of Civil Procedure, 1908**<sup>1</sup>, impugns the **Judgement dated 12.03.2024**<sup>2</sup> passed by the learned Single Judge of this Court in CS(OS) No. 433/2018 titled as "*Sonia Jokhani v. Jugal Kishore Jokhani & Anr.*". By the said Judgment, the learned Single Judge allowed I.A. No.14230/2019 filed by the Respondents/ Defendants under Order VII

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<sup>1</sup> CPC

<sup>2</sup> Impugned Judgement



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Rule 11 of the CPC, and consequently rejected the plaint under clauses (a) and (d) thereof, holding that no cause of action had accrued in favour of the Appellant/Plaintiff therein and that the suit was barred by limitation.

**BRIEF FACTS:**

2. The Appellant and the Respondents are siblings, and the present appeal emanates from a property dispute concerning premises situated at **H-59, Kirti Nagar, New Delhi-11001<sup>3</sup>**, admeasuring approximately 300 sq. yards, which had been purchased on 03.05.1961 by Late Shri Nandlal Jokhani (*father of the parties*) in the name of his mother, Late Smt. Lachmi Devi (*grandmother of the parties*). Shri Nandlal Jokhani passed away intestate on 26.12.1982.

3. On 13.08.1985, Smt. Lachmi Devi executed a registered Will bequeathing the subject property to her daughter-in-law, Late Smt. Kamlesh (*mother of the parties*). A plain reading of the Will reveals that upon the demise of Smt. Lachmi Devi, all her properties, including the subject property, were to devolve upon Smt. Kamlesh, and thereafter, upon her death, to Defendant No. 1/ Respondent No. 1.

4. Following the demise of Smt. Lachmi Devi on 01.11.1987, Smt. Kamlesh applied for mutation of the property in her own name on 13.11.2002. All legal heirs, including Respondent No. 1, submitted affidavits/ **No Objection Certificate<sup>4</sup>** expressly granting their no-objection and recognizing Smt. Kamlesh as the absolute owner. According to the Appellant, this unequivocal acknowledgment amounted to a waiver of their rights, and the relevant documents

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<sup>3</sup> Subject property

<sup>4</sup> NOC



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evidencing such waiver continue to remain with the municipal authorities.

5. Smt. Kamlesh died intestate on 29.12.2006, leaving behind three legal heirs:

- (i) Appellant – Smt. Sonia Jokhani (daughter),
- (ii) Respondent No. 1 – Shri Jugal Kishore Jokhani (son),  
and
- (iii) Respondent No. 2 – Smt. Poonam Madan (daughter).

6. The Appellant asserts that Respondent No. 1, concealing the earlier waiver, fraudulently mutated the property in his exclusive name on 03.06.2008 by misrepresenting himself as the sole owner. On the same day, Respondent No.1 executed a Sale Deed in favour of **M/s Nelson Construction & Promoters Pvt. Ltd.**<sup>5</sup> for the first floor of the subject property, and subsequently, on 28.07.2008, entered into a Collaboration Agreement with Nelson Construction for the re-development of the entire property, receiving consideration of Rs.50,00,000/- under the agreement.

7. Pursuant to this arrangement, Nelson Construction demolished the existing structure in October 2008. The Appellant, unaware of the collaboration and sale transactions, initially objected to the demolition but was reassured by Respondent No. 1 that the property would be divided in accordance with the law. Relying upon such assurance, she refrained from taking any immediate action.

8. During reconstruction, both the Appellant and Respondent No. 1 temporarily relocated their residences.

9. In 2010, Respondent No. 1 instituted Civil Suit No. 207/2010

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<sup>5</sup> Nelson Construction



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before the Civil Judge (West), Tis Hazari Courts, Delhi, seeking an injunction against the Appellant, and on 30.08.2011, obtained an *ex parte* injunction decree restraining her from dealing with the subject property.

10. Thereafter, on 08.09.2011, Nelson Construction sold the first floor of the subject property to one **Gurdev Singh Bansal**<sup>6</sup> by executing a Sale Deed in his favour.

11. When, in October 2011, the Appellant attempted to reoccupy a premise in the subject property, she became aware of the *ex parte* injunction. She consequently moved an application under Order IX Rule 13 CPC, and by order dated 03.01.2013, the said *ex parte* judgment was set aside, whereafter she re-entered the subject property.

12. On 05.02.2014, the Civil Suit No.207/2010 instituted by Respondent No. 1 was dismissed. Since then, the Appellant claims to have been continuously residing on the second floor of the property along with Defendant No.1 as a co-owner.

13. According to the Appellant, during the festival of Bhai Dooj in October 2017, she requested partition of the subject property along with division of movable assets, but Respondent No.1 refused, threatened her with forcible dispossession, and denied her share. Consequently, she instituted CS(OS) No.649/2017 before this Court on 05.12.2017, seeking partition and rendition of accounts against the Respondents. However, this suit was withdrawn on 23.02.2018 with liberty to file a fresh suit.

14. Thereafter, on 02.08.2018, the Appellant instituted the present

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<sup>6</sup> Third party



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suit seeking partition, rendition of accounts, and permanent injunction with respect to the subject property, accompanied by an application for interim relief under Order XXXIX Rules 1 & 2 of the CPC.

15. The Respondents filed their Written Statement, whereafter the Appellant submitted her Replication.

16. Respondent No. 1 initially moved I.A. No.5339/2019 under Order VII Rule 11 of the CPC read with Section 7(vi)(f) of the Court Fees Act, 1870, for rejection of the plaint; however, this application was dismissed as not pressed *vide* order dated 23.08.2022.

17. Subsequently, the Respondents filed I.A. No.14230/2019 under Order VII Rule 11 of the CPC on 21.09.2019, seeking rejection of the plaint on the grounds of absence of cause of action and limitation. The Appellant opposed the same by filing a reply on 31.01.2020.

18. By the Impugned Judgment dated 12.03.2024, the learned Single Judge allowed the application and rejected the Appellant's suit for partition on the grounds that: (i) the suit was barred by limitation, having been filed more than three years after the last cause of action; and (ii) no cause of action subsisted in favour of the Appellant since the Will dated 13.08.1985 is admitted and, under its terms, the property was to devolve upon Respondent No. 1 after the demise of Smt. Kamlesh, coupled with the fact that the Appellant has not challenged the Sale Deed dated 03.06.2008, whereby the first floor was sold to Nelson Construction.

19. Aggrieved by the Impugned Judgment, the Plaintiff/ Appellant has preferred the present Appeal.

**SUBMISSIONS OF THE PARTIES:**

20. Learned Senior Counsel for the Appellant would contend that



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the learned Single Judge failed to appreciate that the Will dated 13.08.1985, executed by Late Smt. Lachmi Devi (*grandmother of the parties*), vested absolute ownership rights in Smt. Kamlesh (*mother of the parties*), and once such absolute rights are conferred upon a devisee, the testator cannot create successive legatees or alter the line of succession, but the learned Single Judge ignored this settled position and binding precedents such as *Sadaram Suryanarayana v. Kalla Surya Kantham*<sup>7</sup> and *Madhuri Ghosh v. Debobroto Dutta*<sup>8</sup>, and instead relied mechanically on illustration (iii) of Section 119 of the **Indian Succession Act, 1925**<sup>9</sup>.

21. It would further be submitted by the learned Senior Counsel for the Appellant that the learned Single Judge failed to consider that Respondent No. 1 had executed an affidavit/NOC in favour of Smt. Kamlesh acknowledging her as the sole and absolute owner, and since such acknowledgment amounted to a waiver of his rights in the property, the conclusion that the Appellant had no cause of action was both erroneous and unjustified.

22. Learned Senior Counsel would further submit that the finding of the learned Single Judge that the suit was barred by limitation is unsustainable, since the limitation for partition of ancestral property is twelve years and not three years, and the right to partition is a continuing and recurring right, and the Appellant demonstrated that Late Smt. Kamlesh died intestate on 29.12.2006, which constituted the first cause of action and that subsequent causes of action accrued repeatedly in 2008, 2011, 2014, 2017 and 2018, thereby showing that

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<sup>7</sup> (2010) 13 SCC 147

<sup>8</sup> (2016) 10 SCC 805

<sup>9</sup> Indian Succession Act



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the suit was well within the limitation.

23. It would further be urged by the learned Senior Counsel for the Appellant that the Appellant had explained the accrual of cause of action in the plaint in a constructive and meaningful manner, and that such causes arose in October 2008 when she shifted from her residence during reconstruction and stayed with Respondent No. 1, and on 31.10.2011 when she was prevented from re-entering the subject property, and on 05.02.2014 when the learned Civil Judge dismissed the injunction suit after allowing her application under Order IX Rule 13 of the CPC, and in October 2017 when she amicably sought partition but was refused, and on 05.12.2017 when she filed CS(OS)649/2017 before this Court seeking partition and rendition of accounts, and finally on 23.02.2018 when she withdrew that suit with liberty to refile, but the learned Single Judge failed to take these facts into consideration.

24. Learned Senior Counsel for the Appellant would also submit that the finding of the learned Single Judge that the suit was not maintainable without challenging the Sale Deed dated 03.06.2008 is equally erroneous, because the Appellant had expressly reserved her right to challenge the Sale Deed separately in her reply to I.A. 14230/2019, since it involved third parties who were not before the Court, and since it is settled law that a non-executant of a sale deed need not seek its cancellation but can nevertheless question its validity.

25. It would also be argued by the learned Senior Counsel for the Appellant that, without prejudice, the Appellant's omission to seek cancellation of the Sale Deed dated 03.06.2008 would not extinguish



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her rights in the subject property, and that the said sale concerned only a portion of the property and, would at best, restrict Respondent No.1 to his share, and it would not prejudice the Appellant's rights as a co-owner.

26. Learned Senior Counsel would, therefore, contend that the Impugned Judgment is legally unsustainable because the learned Single Judge failed to appreciate the pleadings and submissions of the Appellant, particularly her reply to I.A.14230/2019, and instead gave undue weight to the Respondents' case.

27. *Per contra*, learned Counsel for the Respondents would seek to justify the Impugned Judgment, and she, in support thereof, would reiterate the submissions earlier advanced before the learned Single Judge and the findings thereon.

28. It would further be submitted by the learned Counsel for the Respondents that under the Will dated 13.08.1985 executed by Late Smt. Lachmi Devi, the ownership of the subject property devolved absolutely upon Respondent No.1 after the lifetime interest of Smt. Kamlesh, and the present case falls within illustration (iii) to Section 119 of the Indian Succession Act, and the Impugned Judgment therefore suffers from no infirmity, especially since the principle has been clearly interpreted in *Dr Mahesh Chand Sharma v. Raj Kumari Sharma (Smt)*<sup>10</sup>.

29. Learned Counsel for the Respondents would further submit that the subject property devolved upon Respondent No.1 directly under the Will of the grandmother and not through his mother, and therefore, the Appellant's plea of co-ownership is misconceived and does not

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<sup>10</sup> (1996) 8 SCC 128



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entitle her to seek partition.

30. It would also be submitted by the learned Counsel for the Respondents that since the Appellant failed to challenge the Sale Deed dated 03.06.2008 executed in favour of Nelson Construction, she cannot claim co-ownership or partition, and without the said deed being declared null and void she cannot claim a one-third share, and therefore, the suit was rightly held to be not maintainable.

31. Learned Counsel for the Respondents would further contend that after the demise of Smt. Kamlesh on 29.12.2006, Respondent No.1 became the sole beneficiary and absolute owner of the property by virtue of the Will dated 13.08.1985, and he has since been in control of the subject property, and since these facts were within the knowledge of the Appellant who nevertheless remained silent, her claims are barred by limitation, and she cannot now revive her rights after having acquiesced in the ownership and the mutation in favour of Respondent No. 1, coupled with the demolition and reconstruction of the property in 2008, and therefore, the suit was devoid of cause of action and was rightly dismissed.

32. Lastly, it would be submitted by the learned Counsel for the Respondents that the mutation in favour of Smt. Kamlesh cannot be construed as Respondent No.1 having relinquished his rights, particularly since mutation entries do not, by themselves, confer absolute ownership.

### **ANALYSIS:**

33. The Court has heard learned counsel for both parties at length and has meticulously examined the pleadings, including the plaint along with documents, I.A. No.14230/2019 with its reply, and the



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Impugned Judgment.

34. By the Impugned Judgment, the learned Single Judge rejected the Plaintiff/Appellant's plaint on two counts, *namely*, (i) absence of cause of action [*Order VII Rule 11(a) of the CPC*] and (ii) bar of limitation [*Order VII Rule 11(d) of the CPC*].

35. On the issue of cause of action, the learned Single Judge returned the following determinations: -

(i) Mutation does not confer absolute title, and therefore, the mutation of the subject property in the name of Smt. Kamlesh (*mother of the parties*) could not, by itself, render her the sole and absolute owner.

(ii) Smt. Kamlesh did not acquire absolute title under the Will dated 13.08.1985, in view of illustration (iii) to Section 119 of the Indian Succession Act and Section 14(2) of the Hindu Succession Act, 1956; proceeding on that premise, the learned Single Judge concluded that the subject property devolved upon Respondent No. 1 not through his mother but directly under the grandmother's Will, and hence no co-ownership in favour of the Plaintiff/Appellant was disclosed to sustain a suit for partition.

(iii) The suit for partition was not maintainable without first challenging the Sale Deed dated 03.06.2008 executed by Respondent No.1 in favour of Nelson Construction; consequently, the Appellant could not assert co-ownership to the extent of an alleged one-third share.

(iv) As regards movable assets, only vague assertions were pleaded without particulars; hence, no cause of action was



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disclosed on that aspect.

36. On the issue of limitation, the learned Single Judge concluded that since the Appellant admitted the Will dated 13.08.1985 but did not seek any cancellation/declaration despite being aware of it at least since 2010, and since she also did not challenge the Sale Deed dated 03.06.2008 despite being aware of it at least from 05.02.2014, upon conclusion of CS(OS) 207/2010, the suit filed in 2018 was beyond three years and thus barred by limitation.

37. Before testing the above conclusions on their merits, it is apposite to recall the governing principles under Order VII Rule 11 of the CPC as summarised by the Hon'ble Supreme Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali*<sup>11</sup>. The relevant paragraphs of the said judgement are extracted below: -

“**23.1.** We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

- “**11. Rejection of plaint.** - The plaint *shall* be rejected in the following cases -
- (a) *where it does not disclose a cause of action;*
  - (b) *where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
  - (c) *where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;*
  - (d) *where the suit appears from the statement in the plaint to be barred by any law;*
  - (e) *where it is not filed in duplicate;*
  - (f) *where the plaintiff fails to comply with the provisions of Rule 9:*

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<sup>11</sup> (2020) 7 SCC 366



Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

(emphasis supplied)

**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, 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)

“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.”

**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.



23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

**“14. Production of document on which plaintiff sues or relies.**—(1) *Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

(2) *Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

(3) *A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.*

(4) *Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”*

(emphasis supplied)

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

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*, (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.*, (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*, (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.** 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, as held by this Court in the judgment of *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 v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281.

**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.

**24.** “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

**24.1.** In *Swamy Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51, this Court held: (SCC p. 60, para 24)

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the



court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

(emphasis supplied)

**24.2.** In *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)

“5. ... 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....”

(emphasis supplied)

**24.3.** Subsequently, in *ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70, this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

**24.4.** If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174, held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”

(emphasis supplied)

38. The purpose of Order VII Rule 11 of the CPC is to ensure that a plaint which, *inter alia*, either discloses no cause of action or is barred by limitation, does not unnecessarily consume judicial time through futile litigation. The provision empowers the court to terminate sham or meritless proceedings at the very threshold, thereby preventing needless protraction. However, since the provision is drastic in nature,



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the conditions prescribed under the Rule must be applied strictly. Further, under Order VII Rule 14 of the CPC, the documents filed along with the plaint are deemed integral to it, and therefore, while deciding an application under Order VII Rule 11 of the CPC, such documents must necessarily be taken into account. At this preliminary stage, however, the defences raised either in the written statement or in the application for rejection of the plaint on merits, are wholly irrelevant.

39. The guiding test for applying Rule 11 is whether, assuming all averments in the plaint, read as a whole and in conjunction with the supporting documents, to be true, a decree could possibly be passed. This requires the court to examine the plaint in its entirety without dissecting sentences or isolating stray passages. The emphasis lies on substance rather than form, and the plaint must be considered as it stands, without additions or omissions. If, on a *prima facie* reading, the plaint discloses a cause of action, the court cannot, at this stage, adjudicate upon the truth or falsity of the allegations.

40. The expression “cause of action” refers to the bundle of material facts which, when read with the applicable law, entitle the plaintiff to seek relief. It necessarily includes acts or omissions attributable to the defendant, for without such acts, no cause of action can accrue. It is wider than the actual infringement of a right and embraces all foundational facts upon which the claim is based.

41. In the Impugned Judgment, the learned Single Judge has primarily relied on a few paragraphs of the plaint, including paragraphs 31 and 32, to conclude in favour of rejection; however, when the plaint is read holistically along with the annexed documents,



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certain material averments of the Appellant do not appear to have been considered.

42. The plaintiff asserts that the Appellant has been residing in the subject property since 1999, and in 2008, when Respondent No. 1 initiated demolition of the property without her consent, she objected and even lodged police complaints against him, but upon receiving his assurance that her lawful share in the property would be duly protected, she refrained from taking further action.

43. It is further averred that, relying on these assurances, the Appellant temporarily shifted to rented accommodation at Ramesh Nagar, Delhi, along with Respondent No.1 and his family. Subsequently, she moved alone to Om Apartments, Punjabi Bagh, Delhi. During this period, Respondent No. 1 instituted Civil Suit No. 207/2010 before the Civil Judge (West), Tis Hazari Courts, Delhi, seeking an injunction against the Appellant, and on 30.08.2011, obtained an *ex parte* injunction decree. The plaintiff further avers that the Appellant successfully challenged this by filing an application under Order IX Rule 13 of the CPC, which was allowed, thereby restoring her right to re-enter the subject property. Then the Appellant moved back to the subject property. Ultimately, the said suit for injunction was dismissed on 05.02.2014, after which she has continuously remained in possession of a portion of the second floor.

44. We also note that the fact of the Appellant's possession also finds recognition in the order dated 23.08.2022, passed by the learned Single Judge while considering her application under Order XXXIX Rules 1 and 2 of the CPC. Moreover, the record reveals that the dismissal order dated 05.02.2014 passed in Civil Suit No. 207/2010 by



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the Civil Judge (West), Tis Hazari Courts, Delhi, remained unchallenged, and Respondent No.1 has not objected to or contested the Appellant's re-entry and continued possession of a portion of the second floor of the subject property, where she has been residing for decades.

45. The plaintiff further avers that during the festival of Bhai Dooj in October 2017, the Appellant amicably requested a partition of all movable and immovable assets left behind by Late Smt. Kamlesh, asserting her entitlement to a one-third share therein. However, Respondent No. 1 refused this request and allegedly issued threats of dispossession. In response, the Appellant contended that since Smt. Kamlesh had passed away intestate, her estate was liable to be partitioned equally amongst her heirs in accordance with the law.

46. This Court notes that, although the Will dated 13.08.1985 may *prima facie* appear to bequeath the subject property to Respondent No. 1 following the limited lifetime interest of Late Smt. Kamlesh, the conduct of the parties during the mutation proceedings in favor of Late Smt. Kamlesh is of particular significance. At that stage, all parties, including Respondent No. 1, executed and submitted Affidavits/NOCs expressly acknowledging that their mother, Smt. Kamlesh, was the sole and absolute owner of the subject property. These contemporaneous declarations, which ostensibly amount to admissions of ownership in favour of Late Smt. Kamlesh, do not appear to have been adequately considered in the threshold analysis under Order VII Rule 11 of the CPC. For ready reference, the relevant portion of the Affidavits/ NOCs, identical in terms for all parties, is reproduced hereunder:



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“....

3. That my Grand mother Smt. Lachmi Devi wife of Late Shri. Ram Chand passed away on 01.11.1987.

4. That after her demise, as per her wish and regd. WILL my mother Smt. Kamlesh W/o Late Shri Nand Lal became the sole and exclusive owner of above noted property to the extent of full share, and Now the same is in her possession as a sole & absolute owner.

5. That Now Smt. Kamlesh seek to mutation/transfer the above noted property in her name in the record of MCD, and I have got no objection for the mutation/substitution of above noted property in the name of my mother Smt. Kamlesh in the record of MCD., and I or my legal heirs shall not raise any objection, claim against the same.

6. That it is my true statement, and I shall remain responsible for any false statement.

.....”

47. In view of the foregoing, and with due respect to the learned Single Judge, it is evident that the Impugned Judgment partially relied upon certain portions of the plaint while disregarding crucial averments, most notably, the Appellant/ Plaintiff’s continuous and long possession of a portion of the subject property, barring a brief interruption during its reconstruction, and the NOCs that recognized the absolute ownership of Smt. Kamlesh. These aspects constitute vital material facts and cannot be overlooked when determining whether a “cause of action” exists under Order VII Rule 11(a) of the CPC.

48. This Court reiterates that the averments in a plaint must be read holistically and in their entirety and not in fragments, nor should they be treated as contradictory admissions by reading in parts or isolation.

49. As regards the objection that Nelson Construction, the purchaser of the first floor under the Sale Deed dated 03.06.2008, was not impleaded as a party, it is well settled that non-joinder by itself cannot furnish a ground for rejection of a plaint, without determining



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whether a party is indeed a proper or necessary party. Further, Order I Rule 10 of the CPC expressly vests the Court with power, either *suo moto* or upon application, to implead any person whose presence is necessary for an effective and complete adjudication of the issues in dispute.

50. Likewise, the mere absence of a specific relief seeking cancellation or a declaration of nullity in respect of the Sale Deed dated 03.06.2008 cannot, at the threshold, justify rejection of the plaint under Order VII Rule 11 of the CPC. Keeping in view the facts and circumstances of the present case, whether such a relief is necessary could have been determined at the stage of framing of issues and thereafter. At this stage, the Court cannot be oblivious to the fact, *inter alia*, that the Appellant/ Plaintiff has been residing in the subject property for decades.

51. The record of this case reflects that the Plaintiff/ Appellant is not the executant of the Sale Deed dated 03.06.2008, therefore, we are of the considered opinion that there was no necessity for her to seek its annulment or cancellation.

52. On a fair reading of the plaint with its documents, we are of the considered opinion that this case was not amenable to rejection under Order VII Rule 11(a) of the CPC; the plaint discloses a triable cause of action for partition, injunction, and rendition of accounts.

53. On the question of limitation, the learned Single Judge held that the suit was barred as the Appellant had not challenged the Sale Deed dated 03.06.2008, despite being aware of it at least from 05.02.2014, and that the suit instituted in 2018 was consequently beyond the prescribed period of three years.



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54. Even assuming that the Sale Deed dated 03.06.2008 was required to be specifically challenged, a premise which the Appellant disputes, particularly on the ground that she was not an executant thereof, the conclusion that the claim was barred by limitation at the threshold stage under Order VII Rule 11 of the CPC is legally untenable on two counts. First, it proceeds on the contested assumption that a direct challenge to the Sale Deed dated 03.06.2008 was mandatory; and second, the question of limitation in the present context is not a pure question of law but rather a mixed question of law and fact, dependent upon several factors including accrual of cause of action, continuous possession of the Appellant over part of the property, acknowledgements, and the nature of reliefs claimed.

55. It is a settled principle that where the issue of limitation turns on disputed foundational facts, such as the date of knowledge, the existence of a continuing or recurring cause of action, the factum of possession, or the necessity of particular forms of relief, the matter must be adjudicated after framing of issues and upon the parties leading evidence, and cannot be summarily decided at the threshold under Order VII Rule 11(d) of the CPC.

56. Accordingly, the rejection of the plaint on the ground of limitation is unsustainable and is, therefore, liable to be set aside.

57. With regard to the movable properties, the learned Single Judge observed that although the plaint does contain certain particulars in respect thereof, the same were found to be inadequate, and consequently, the plaint was held liable to rejection on this count as well.

58. However, it is a well-settled principle of law that a plaint cannot



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be rejected in part. This position has been emphatically clarified by the Hon'ble Supreme Court in *Geetha v. Nanjundaswamy*<sup>12</sup>, wherein the Court categorically held that rejection under Order VII Rule 11 of the CPC must pertain to the plaint as a whole and cannot be confined to only a portion of the claim. The relevant paragraphs of the said judgment are reproduced herein below: -

“12. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a *plaint cannot be rejected in part*. This principle is well established and has been continuously followed since the 1936 decision in *Maqsud Ahmad v. Mathra Datt & Co.*<sup>4</sup>. This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*,<sup>5</sup> which was again followed in *Madhav Prasad Aggarwal v. Axis Bank Ltd.*<sup>6</sup> The relevant portion of *Madhav Prasad* (supra) is extracted hereinunder:

*“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*, (2018) 11 SCC 780 is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The*

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<sup>12</sup> 2023 SCC OnLine SC 1407



Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

...  
**12.** Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...”

(emphasis supplied)

**13.** In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground.”

(emphasis supplied)

59. In view of the aforesaid principle, the rejection of the Appellant’s plaint on the ground relating to movable properties is now unsustainable, for once the plaint in respect of immovable property has been held to survive, as discussed earlier, the plaint cannot be rejected in part, and therefore, must necessarily proceed as a whole.

### **CONCLUSION:**

60. For the reasons stated above, the appeal is allowed. The Impugned Judgment dated 12.03.2024 passed by the learned Single Judge in I.A. No.14230/2019 in CS(OS) No.433/2018 is set aside. Consequently, CS(OS) No.433/2018 is restored to the file of the learned Single Judge for further proceedings in accordance with law.



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61. It is clarified that all issues shall remain open, and the suit shall proceed uninfluenced by any observations made herein, which are confined solely to the limited scope of adjudication under Order VII Rule 11 of the CPC.

62. The present appeal, along with pending application(s), if any, stands disposed of in the above terms.

63. No order as to costs.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**AUGUST 28, 2025/sm**