



2026:DHC:3084-DB



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

***Reserved on: 09.02.2026***  
***Pronounced on: 15.04.2026***

+ RFA (OS) 30/2025& CM APPL. 29355/2025

**NARESH GUPTA & ANR. ....Appellants**

Through: Mr. Harish Malhotra, Sr. Adv.  
with Mr. A. Maitri, Ms.  
Radhika Kushaldas & Ms. Parul  
Sharma, Advs.

versus

**NIKHIL@NIKHIL KUMAR & ORS. ....Respondents**

Through: Mr. Sandeep Sharma, Sr. Adv.  
Ms. Kanchan Semwal, Mr.  
Piyush Choudhary, Mr. Praveen  
Kr., Ms. Ruheena & Ms. Ragini,  
Advs./R1  
Mr. Vikas Gautam, Adv./R2&3  
Mr. Neeraj Kumar, R4/DDA

**CORAM:**  
**HON'BLE MR. JUSTICE VIVEK CHAUDHARY**  
**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**J U D G M E N T**

1. The present appeal has been filed under Section 10 of the Delhi High Court Act, 1966 assailing the Judgment and Decree dated 02.04.2025 passed by the learned Single Judge in I.A. 17101/2023 of CS(OS) 20/2022 titled as *Naresh Gupta & Anr. v. Nikhil @ Nikhil Kumar & Ors.*, whereby, the application filed by the respondents under Order VII Rule 11 read with Section 151 of the Code of Civil



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Procedure, 1908 (“CPC”) was allowed and consequently, the civil suit filed by the appellants was rejected under Order VII Rule 11(a) and (d) of the CPC.

2. The appellants and respondent Nos. 1 to 3 are the legal heirs of Late Shri Surendra Prakash Gupta. Earlier, a Civil Suit bearing No. 142/1995 was filed by the appellants and respondent Nos. 2 and 3 against Late Shri Surendra Prakash Gupta, thereby seeking declaration of co-ownership in respect of the Property No. 144, Deepali Pitampura, Delhi (“suit property”), which stood dismissed on 29.11.1995. The first appeal there against, being RCA No. 5/1996 was dismissed on 04.07.2001, and the second appeal RSA No. 143/2001 stands withdrawn on 28.03.2008.

3. Upon demise of Late Shri Surendra Prakash Gupta on 12.12.2003, the appellants instituted Civil Suit being CS (OS) 20/2022 seeking partition, declaration and injunction in respect of the suit property.

4. The case of the appellants predicates upon a Will dated 17.02.2002, allegedly executed by the deceased, which, according to them, superseded an earlier Will dated 23.05.1997. It is further the case of the appellants that the respondents had played fraud with the appellants as well as with the Delhi Development Authority/respondent No. 4 (“DDA”), in obtaining the Mutation dated 15.04.2021 and Conveyance Deed dated 26.08.2021 on the basis of the alleged Will dated 25.03.1997.

5. In view thereof, the appellants sought a final decree of partition



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of the suit property declaring that the appellant Nos. 1 and 2 are owner-in-possession of 1/3<sup>rd</sup> share each in the said suit property by virtue of the Will dated 17.02.2002, and for a decree of permanent injunction against the respondents as well as for declaring the aforementioned Mutation dated 15.04.2021 and Conveyance Deed dated 26.08.2021 as null and void.

6. During the pendency of the said civil suit, the respondent No. 1 filed his counter claim as well as an application under Order VII Rule 11 read with Section 151 of the CPC claiming that the Will dated 17.02.2002 is forged and fabricated and thus, sought rejection of the plaint on the grounds of lack of cause of action as well as for being barred by limitation.

7. After hearing the learned counsels for both sides, the learned Single Judge, by way of the impugned judgment, allowed the aforesaid application under Order VII Rule 11 and dismissed the civil suit filed by the appellants herein. Aggrieved thereof, the appellants preferred the present appeal.

8. The impugned judgment was assailed by the appellants contending that the appellants are in settled, lawful, and continuous possession of their respective portions of the suit property, with appellant Nos. 1 and 2, occupying the first floor and the second floor, respectively, while respondent No. 1 occupying the ground floor. It was argued that Late Sh. Surendra Prakash Gupta, by way of his last valid Will dated 17.02.2002, duly executed in the presence of attesting witnesses in accordance with Section 281 of the Indian Succession



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Act, 1925, bequeathed distinct portions of the suit property to the parties, thereby conferring absolute ownership upon them. The said Will was accepted and acted upon by all family members from 2002 till 2021, and the appellants had no knowledge of any earlier Will dated 23.05.1997 during this period.

9. It was further submitted that the cause of action for filing of the Civil Suit arose only in November 2021, when the appellants discovered that respondent No. 1 had, on the basis of the alleged Will dated 23.05.1997, fraudulently procured Mutation dated 15.04.2021 and Conveyance Deed dated 26.08.2021 in his favour through DDA. In these circumstances, it is contended that the learned Single Judge erred in rejecting the plaint under Order VII Rule 11 CPC by prematurely adjudicating disputed facts and relying upon the defence of the respondents. The impugned judgment, therefore, suffers from a jurisdictional error and is liable to be set aside.

10. *Per contra*, the learned Senior counsel for the respondents submitted that the civil suit is wholly misconceived and based on a fabricated Will dated 17.02.2002, which was never disclosed or relied upon in earlier proceedings, including applications filed after the demise of Late Sh. Surendra Prakash Gupta in 2003. Furthermore, the genuine and operative Will is dated 23.05.1997, which was well within the knowledge of the appellants, and thus, no fresh cause of action arose in 2021 as alleged.

11. It was further argued that the appellants' conduct demonstrates suppression and afterthought, as even in legal notices issued in 2021,



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no reference was made to the alleged Will of 2002. The suit, filed in 2022, is therefore clearly barred by limitation, the cause of action, if any, having arisen upon the death of the testator/father in 2003. It was submitted that the learned Single Judge rightly exercised jurisdiction under Order VII Rule 11(a) and (d) CPC in rejecting the plaint, having found absence of cause of action and that the suit was barred by law, warranting dismissal of the present appeal.

12. We have heard the learned Senior counsels for the parties and have perused the record.

13. By way of the impugned order the learned Single Judge has held the suit to be manifestly vexatious and devoid of a real cause of action. The Court found the appellants' reliance on the alleged Will dated 17.02.2002 to be inherently implausible, particularly in light of the admitted existence of a registered Will dated 23.05.1997 and the complete absence of any reference to the Will of 2002 during prolonged prior litigation between the parties extending up to 2008. The said omission, coupled with inconsistent pleadings and lack of any steps to prove the said Will, rendered the appellants' case speculative and illusory.

14. Further, the learned Single Judge has held that the suit is *ex facie* barred by limitation under Article 58 of the Limitation Act, 1963, since the cause of action, as per the appellants' own pleadings, arose in 2003 upon the death of the testator, whereas the suit was instituted only in 2022. In these circumstances, applying the settled principles governing Order VII Rule 11 CPC, the Court concluded



that the plaint deserved rejection at the threshold being both meritless and barred by law.

15. The principal issue that arises for consideration before this Court is whether the learned Single Judge rightly rejected the plaint under Order VII Rule 11 of the CPC.

16. The law relating to rejection of a plaint under Order VII Rule 11 CPC is well settled now. The Supreme Court, in ample number of decisions, has held that if on a meaningful reading of the averments in a plaint, it is found that the suit is manifestly vexatious, devoid of any merit or lacks a right to sue, the same would be liable to be dismissed in consonance with Order VII Rule 11 CPC. Furthermore, in considering the same, the Court must remain vigilant to ensure that no illusion of cause of action has been created by way of clever drafting. Simultaneously, Order VII Rule 11 of the CPC casts a duty, which is mandatory in nature, that the Court must carefully examine whether the suit is barred under any law, including the Limitation Act, 1963, which prescribes a statutory time period for institution of any suit, appeal and application. The Supreme Court in ***Popat and Kotecha Property v. State Bank of India Staff Assn.***, (2005) 7 SCC 510, has held as follows:

*“13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.*

*14. In Saleem Bhai v. State of Maharashtra [(2003) 1SCC 557] it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be*



looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. **For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.**

15. In *I. T. C. 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.

**16. 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].)**

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] it was observed that the



*averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*

*19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.*

*20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised."*

*(emphasis supplied)*

17. In the aforesaid backdrop, a perusal of the plaint reveals that the appellants instituted the civil suit in the year 2022 seeking reliefs of



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partition, declaration, permanent injunction as well as for mandatory injunction against the respondents. The appellants have asserted that the Will dated 17.02.2002 has been executed by Late Sh. Surendra Prakash Gupta in the presence of attesting witnesses, out of which, one witness namely, Dr. J.P Gupta expired on 03.01.2017, however, it is stated that the second witness has duly affirmed the genuineness and correctness of the said Will, having sworn an affidavit in accordance with Section 281 of the Indian Succession Act, 1925.

18. In the plaint, the appellants have further averred that the aforesaid Will dated 17.02.2002 was duly accepted as the last and final Will of Late Sh. Surendra Prakash Gupta and in view thereof, no disputes arose between the beneficiaries of the Will from 2002 onwards till 2021. It is further case of the appellant that they were never aware of the alleged Will of 23.05.1997 as well as about the Mutation of the suit property by respondent No.4/DDA, which came to their knowledge through a local property dealer only in the month of November 2021. The relevant portion of the plaint is extracted hereinbelow:

*“35. It is submitted that the Plaintiffs were never aware of alleged Will dated 23.05.1997 earlier, prior to November 2021. But, now, at this stage of time, the Plaintiffs have come to know that Defendant No.1 have relied upon earlier Will dated 23.05.1997 of Late Sh. Surendra Prakash (father), therefore, the need and necessity has arisen for filing of the present suit and to challenge the legality and validity of Will dated 23.05.1997 and most specifically when the Late Sh. Surendra Prakash (father) had executed his last Will*



*dated 17.02.2002.*

*36. It is submitted that in November 2021, the Plaintiffs through a local property dealer came to know regarding mutation of the suit property by DDA.*

*The Plaintiffs also learnt that DDA granted mutation in name of Defendant No. 1 and consequently thereof the Plaintiffs got a notice issued to the DDA that how and on what basis mutation was granted in name of Nikhil Kumar / Defendant No.1.”*

19. A plain reading of the entire plaint indicates that the appellants have asserted substantive rights to claim portion of the suit property on the basis of the Will dated 17.02.2002, stated to be executed in the presence of two attesting witnesses. The appellants have also stated in their plaint that on the basis of the aforementioned illegal documents, they apprehend an immediate threat that the respondent No. 1 may create third party interest by selling and/or alienating the suit property.

20. A bare perusal of the impugned judgment discloses that the learned Single Judge has rejected the plaint to be vexatious and unacceptable on the following grounds:

- i) That the Will dated 23.05.1997 was a registered one, whereas the Will of 17.02.2002 was unregistered.
- ii) Further, in paragraph No. 32 of the plaint, plaintiffs themselves state that they did not dispute the legality of the Will dated 23.05.1997, as the same was admittedly executed during the pendency of RSA No. 5/1996.
- iii) The reference to the Will of 2002 did not crop up during the pendency of RSA No. 143/2001, which was later on



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withdrawn in 2008, and the same is also not mentioned in application filed under Order XXII Rule 4 of the CPC in those proceedings.

iv) The vexatiousness of the Suit is apparent from the circumstances which are mentioned by testator in the Will of 1997.

21. The impugned judgment further records the context in which the Will of 1997 was executed, wherein, the testator stated that the suit property is a self-acquired property which was wholly constructed without any financial assistance of his two elder sons i.e., the appellants herein. He further stated that his children, including his two daughters had overpowered him in forcibly occupying substantial portion of the suit property by taking advantage of his ailing conditions. The Will further records that that Late Sh. Surendra Prakash was residing along with his wife and his youngest son, i.e., the respondent No. 1, on the ground floor of the suit property. In view thereof, as per the Will dated 23.05.1997, the appellants were disinherited from their share in the suit property while the same was bequeathed to respondent No. 1.

22. The learned Single Judge, based upon the aforementioned recitals in the aforesaid Will of 1997, concluded that a father changing his mind later in the year 2002 and reverting from the aforesaid Will of 1997, was a suspicious circumstance and an inconceivable situation. Accordingly, the learned Single Judge found the assertions regarding the later Will dated 17.02.2002 in the plaint to be frivolous



and liable to be rejected under Order VII Rule 11(a) of the CPC.

23. Learned Single Judge has further found that the appellants have not disputed the legality and validity of the Will of 1997. However, a plain reading of paragraph 32 of the plaint demonstrates that the appellants have categorically disputed the Will of 1997 and even pleaded the ignorance about its execution. In view thereof, the finding of the learned Single Judge that the appellants did not dispute the Will dated 23.05.1997 is *ex facie* contrary to the pleadings. The appellants have also claimed in their plaint that the execution of Will of 1997 was prejudicial to their rights as the rights of parties were in dispute in earlier suit being RCA No. 5/1996. They have also averred in the subsequent paragraphs of their plaint that the dispute was later resolved in the family afterwards and consequentially, the Will of 2002 was executed and, therefore, RSA No. 143/2001 was not pressed and withdrawn in 2008.

24. Further, the validity of the Will dated 1997 becomes immaterial if the Will dated 2002 is held to be valid, as the latter, being subsequent in time, would prevail.

25. The learned Single Judge has also rejected the plaint as being barred by limitation by invoking Article 58 of the Limitation Act, 1963, holding that the cause of action arose upon the death of their father on 12.12.2003 and therefore, the limitation for contesting a suit started running against the appellants from 2003 itself, making the civil suit, which was filed in 2022, as highly time-barred.

26. Even *qua* the issue of limitation, the appellants have specifically



asserted in their plaint that the Will dated 23.05.1997 was never put to use prior to 2021 and that the cause of action accrued in favour of the appellants only when they came to know about the alleged Mutation as well as about the Conveyance Deed in the name of the respondent No. 1 sanctioned by respondent No. 4/DDA.

27. The appellants have also asserted a continuously accruing cause of action in their favour as they state that they are under the threat of forcible dispossession at the hands of respondent No. 1.

28. In the considered opinion of this Court, the aforesaid pleadings raise triable issues which necessarily require adjudication upon evidence being led by the parties and the suit could not have been rejected at the threshold stage of Order VII Rule 11(a) of the CPC. At the stage of Order VII Rule 11 CPC, the Court is required to assume the averments in the plaint to be true and cannot embark upon an enquiry into their correctness or otherwise.

29. The learned Single Judge committed grave error by arriving at a premature conclusion and drawing adverse inferences based on the Will of 23.05.1997, which were beyond the scope of Order VII Rule 11 of the CPC. The issue of limitation, in this case, is also a mixed question of facts and law both, particularly in light of the plea of lack of knowledge and allegations of fraud, which require adjudication by the learned Single Judge by permitting the parties to lead evidence, and should not have been summarily decided without trial.

30. In view of the aforesaid discussion, this Court is of the considered opinion that the impugned judgment cannot sustain and is,



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accordingly, set aside. The present appeal stands allowed. The suit is restored to its original number.

31. The parties through their counsel are directed to appear before the learned Single Judge (Roster Bench) on 28.04.2026.

32. No observations made in this Order shall affect the merits of the case.

33. The present appeal, along with pending applications, stands disposed of in the aforesaid manner.

**VIVEK CHAUDHARY, J.**

**RENU BHATNAGAR, J.**

**APRIL 15, 2026**/*p/sm/kp*