



2025:DHC:7789-DB



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

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*Judgment reserved on:20.08.2025**Judgment pronounced on: 08.09.2025*

+ FAO(OS) 34/2023

R.N.SINGH

.....Appellant

Through: Mr. Sanjiv Bahl, Mr. Ajay  
Bahl, Mr. Vikash Sharma, Ms  
Deepiksha Bhatt, Advs.

versus

MURARI MIRCHANDANI AND ORS .....Respondents

Through: Mr. Arun Batta, Mr. Anurag  
Sharma, Mr. Abdul Wahid, Mr.  
Shivansh Jindal, Advs.**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. Through this appeal under Section 10 of the Delhi High Court Act, 1966 and Order XLIII of the Code of Civil Procedure, 1908 [hereinafter referred to as the "CPC"], the Appellant [Defendant No.5 in the original Plaintiff] assails the Judgement dated 18.11.2022 passed by the learned Single Judge in CS (OS) No. 1081/2014 captioned *Murari Mirchandani vs. Jatinder Sardana & Ors.*, wherein an application filed under Order VII, Rule 11 of the CPC filed by the Appellant/Defendant No.5 was dismissed holding that no ground was made out for rejection of the plaint, with cost of Rs. 1,00,000/-.



**BRIEF FACTS:**

2. Admittedly, Sh. Surender Kumar Sardana was the owner of the property bearing No. **S-94, Panchsheel Park, New Delhi** [hereinafter referred to as the ‘suit property’], who passed away on 05.04.2011. He was a bachelor and died intestate, leaving behind only Class II legal heirs:

- i. Late Sh. Jatinder Sardana/Respondent No. 2 (Brother)
- ii. Ms. Sushma Dewan/Respondent No. 3 (Sister)
- iii. Late Ms. Sushila Arora/ Respondent No. 4 (Sister)
- iv. Late Ms. Pushpa Mediratta/ Respondent No. 5 (Sister).

3. It is the case of Sh. Raj Narain Singh/Appellant that Late Sh. Surender Sardana had executed a General Power of Attorney [hereinafter referred to as “GPA”] and Agreement to Sell [hereinafter referred to as “ATS”] dated 24.02.1986, pertaining to the suit property in his favour on receipt of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) in cash. The suit property was executed *vide* Conveyance Deed dated 12.08.2013 in favour of the Appellant by the Delhi Development Authority [hereinafter referred to as the “DDA”], based on the said GPA/ATS.

4. After the death of Late Sh. Surinder Sardana, his brother, Respondent No.2, for himself and on behalf of Respondent Nos.3 to 5, executed a Memorandum of Understanding dated 18.01.2012 in favour of Sh. Murari Mirchandani/Respondent No.1 for the purchase of the suit property for a total consideration of Rs.19,00,00,000/-



(Rupees Nineteen Crores Only). Thereafter, an ATS dated 11.04.2012 was executed by Respondent No.2, for himself and on behalf of Respondent Nos.3 and 4, in favour of Respondent No. 1 for their 3/4<sup>th</sup> share in the suit property for a total consideration of Rs. 14,75,00,000/- (Rupees Fourteen Crore and Seventy-Five Lakhs Only). Notably, Respondent No.5 and Appellant did not execute the ATS. However, the Respondent Nos.2 to 5 failed to fulfil their obligation under the MOU and the ATS and therefore, Respondent No.1 was compelled to file a suit for specific performance.

5. Respondent No.1 [Plaintiff in the Original Suit] has prayed for the following reliefs in the underlying suit:

*“(a) pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring GPA and Agreement to Sell dated 24.02.1986 in favour of Defendant No.5 as well as the Conveyance Deed dated 12.08.2013 executed by DDA in favour of Defendant No.5 with respect to the property bearing house bearing No.S-94, Panchsheel Park, New Delhi as null, void and not binding on the Plaintiff.*

*(b) pass a decree of specific performance in favour of the Plaintiff and against the Defendants thereby directing the Defendants to specifically perform the MOU dated 18.01.2012 and Agreement to Sell dated 11.04.2012 jointly and hand over the possession of the suit property and execute and get the Sale Deed registered in respect of the suit property being the property bearing house bearing No.S-94, Panchsheel Park, New Delhi, built up on a land measuring 499 sq. yds.*

**OR IN THE ALTERNATIVE**

*pass a decree of recovery of damages in favour of the plaintiff and against the defendants jointly and severally, for a sum of Rs.19, 00, 00,000/- (Rupees nineteen crores only) alongwith interest at the rate of 18% p.a. from the date of filing of suit till realization.*

*(c) pass a decree of permanent injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants from selling, transferring, handing over possession, alienating or creating third party interest in the property bearing house bearing No.S-94, Panchsheel Park, New Delhi, built up on a land measuring 499 sq.*



yds.

*(d) award costs of the suit to the Plaintiff pass any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Plaintiff and against the Defendants."*

6. It is pertinent to note that a perusal of the pleadings shows a chequered history of *lis* between the original defendants.

i. In the year 2012, a suit, being CS(OS) No.350/2012, was filed by one of the LRs of the pre-deceased sister of Late Sh. S. K. Sardana seeking partition of the suit property, which was dismissed *vide* Order dated 26.03.2014, for having no cause of action.

ii. A Writ Petition, being W.P.(C). No.258/2014 was filed by the Respondent Nos.2 and 3 against DDA and Appellant, assailing the Conveyance Deed dated 12.08.2013 and for cancellation of the title deeds of Appellant regarding the suit property. The Court dismissed the petition *vide* Order dated 30.01.2014 on the ground of willful suppression of material facts of having executed the ATS, imposing a cost of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Petitioners. Subsequently, LPA No. 171/2014, challenging the Judgment in the Writ Petition, was also dismissed *vide* Judgment dated 14.10.2014.

iii. Meanwhile, on 27.01.2014, Respondent Nos.2 and 3 filed a suit bearing Case No. 10/2014 [renumbered as CS No. 5649/2016] against Sh. R. N. Singh and DDA for declaration/cancellation of the ATS/GPA dated 24.02.1986 and mandatory injunction before the District Judge, Saket Courts, New Delhi against the Appellant. During the pendency of the



suit, Respondent No.2 expired on 28.12.2017, and the suit stood abated *qua* him. *Vide* Order 01.12.2018, the case was dismissed for non-prosecution.

7. In the suit filed by the Respondent No. 1, the Appellant raised a preliminary objection by filing I.A.15648/2014 under Order VII, Rule 11 of the CPC, seeking rejection of the plaint at the threshold on, *interalia*, the ground of absence of cause of action, while also claiming that the Respondent Nos.2 to 5 have no title and right in the suit property and thereby, the ATS dated 11.04.2012 nor the MOU dated 18.01.2012 have any bearing in law.

8. By the Impugned Judgment dated 18.11.2022, the learned Single Judge dismissed the application stating that no grounds have been made out for rejection of the plaint under the provisions of Order VII Rule 11 of the CPC and imposed a cost of Rs. 1,00,000/- (Rupees One Lakhs Only) on the Appellant. Aggrieved by the Impugned Judgment, the Appellant/Defendant No.5 has preferred the present Appeal.

#### **SUBMISSIONS RAISED BY THE APPELLANT:**

9. Learned counsel for the Appellant submitted that the suit has no cause of action against the Appellant as the Appellant was neither party to the ATS dated 11.04.2012 nor to the MOU dated 18.01.2012. Hence, the plaint may be rejected against him.

10. Learned counsel submitted that the Appellant had perfected the title *qua* suit property through the Conveyance Deed dated 12.08.2013 executed by the DDA, on the strength of the ATS and GPA executed



on 24.02.1986. He also submitted that the Respondent Nos.2 to 5 have no title or right or interest in the suit property, and therefore, the ATS dated 11.04.2012 and the MOU dated 18.01.2012 have no legal bearing.

11. Learned counsel submitted that the Respondent No.1 had no right to challenge the documents or the title of the Appellant with regard to the suit property under Section 34 of the Specific Relief Act, 1963 [hereinafter referred to as 'SRA'], being a stranger to the transaction between the original owner and the Appellant. Further, he would contend that Respondent No.1 cannot claim relief under Section 19(1)(b) of the SRA against the Appellant and Respondent Nos.2 to 4.

12. The Appellant argued that the challenge raised by the Class II legal heirs of Shri SK Sardana to the Appellant's title *qua* the suit property and the Conveyance Deed dated 28.06.2013, was dismissed.

13. The Appellant argued that the challenge is time-barred as the Respondent Nos.2 to 5 had knowledge regarding the title of the Appellant *vide* Order dated 26.03.2014 passed in suit CS(OS) No.350/2012 captioned ***Sangeeta Bhambani Vs. Jatinder Sardana & Ors.***

14. Reliance has been placed on the following Judgements:

***i. Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust<sup>1</sup>,***

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<sup>1</sup>(2012) 8 SCC 706.



- ii. *T. Arivandandam v. T.V. Satyapa*<sup>2</sup>
- iii. *M/s Sakthi Sugars Limited v. Union of India & Anr.*<sup>3</sup>
- iv. *Sivananda Roy v. Janaki Ballav Pattnaik*<sup>4</sup>
- v. *Aruna Gupta v. Ranbir Singh Dhanjal*<sup>5</sup>
- vi. *Samarjit Chakravarty v. Tej Properties Pvt. Ltd.*,<sup>6</sup>
- vii. *V.K. Sreedharan v. Chandramaath Balakrishnan*<sup>7</sup>
- viii. *Gomti Devi v. Ram Prasad*<sup>8</sup>
- ix. *Sewa Ram v. Union of India*<sup>9</sup>
- x. *Suraj Lamp and Industries Private Limited v. State of Haryana & Anr.*<sup>10</sup>

#### **SUBMISSIONS RAISED BY THE RESPONDENT NO. 1:**

15. Per contra, the learned counsel for the Respondent No.1 has argued that the title documents of the Appellant, being ATS/GPA dated 24.02.1986, claiming suit ownership of the suit property, are forged and fabricated, as Late Sh. S. K. Sardana was dealing with the suit property till the time of his death, which is evident from the documents on record. The Conveyance Deed, post the execution of the ATS and MOU has no legal force.

16. The Respondent No.1 has pleaded that the Suit is maintainable under Section 19 of the SRA as the Appellant acquired the title through the Conveyance Deed, which was after the ATS and MOU.

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<sup>2</sup>(1977) 4 SCC 2421.

<sup>3</sup>AIR 1981 Delhi 212

<sup>4</sup>AIR 1985 Orissa 197

<sup>5</sup>Aruna Gupta v. Ranbir Singh Dhanjal, 2001 SCC OnLine P&H 590

<sup>6</sup>Samarjit Chakravarty v. Tej Properties Pvt. Ltd., 2014 SCC OnLine Del 3809

<sup>7</sup>(1990) 3 SCC 291

<sup>8</sup>2014 SCC OnLine Del 2617

<sup>9</sup>(1997) 5 SCC 166

<sup>10</sup>(2012) 1 SCC 656



17. Learned counsel has submitted that it is a settled position that a plaint cannot be rejected in part and that the plaint shows enough cause of action against the Appellant.

18. Lastly, the Respondent No. 1 apprehends that Respondent No.2, in collusion with the Appellant, is acting to the detriment of the rights of the Respondent No.1, as has also been recorded by the learned Single Judge in Paragraph No.19 of the Impugned Judgment.

19. Reliance has been placed on the following Judgments:

- i. Haji Abdul Mateen v. Rattan Singh*<sup>11</sup>,
- ii. Geetha v. Nanjundaswamy*<sup>12</sup>,
- iii. Ram Prakash Gupta v. Rajiv Kumar Gupta*<sup>13</sup>,
- iv. Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*<sup>14</sup>

### **ANALYSIS:**

20. We have heard the arguments of the learned counsel representing the parties and, with their able assistance, have perused the plaint along with documents, IA No. 15648/2014 with its reply and the Impugned Judgment.

21. Order VII, Rule 11 of the CPC reads as under:-

#### **“ORDER VII**

##### ***Plaint***

***11. Rejection of the plaint.***— *The plaint shall be rejected in the following cases:—*

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<sup>11</sup>2018 SCC OnLine Del 12268

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

<sup>13</sup>2006 SCC OnLine Del 488

<sup>14</sup>(2018) 11 SCC 780



- (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 returned 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:

*Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.”*

22. The principles envisaged in Order VII Rule 11 of the CPC, have been succinctly explained in the decision of the Supreme Court in ***Dahiben v. Arvinbhai Kalyanji Bhanusali***<sup>15</sup>, as follows:

*“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 ManvendrasinhjiRanjitsinhji Jadeja v. Vijaykunverba, 1998 SCC*

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<sup>15</sup>(2020) 7 SCC 366



*OnLineGuj 281 : (1998) 2 GLH 823] 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.*

**23.6.** *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

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**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. [SopanSukhdeo 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 [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. [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 [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 [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 case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLineGuj 281 : (1998) 2 GLH 823].*

**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”*

23. With this background, we shall deal with the arguments advanced by the Appellant for rejection of the Plaint under Order VII Rule 11 of the CPC.

24. The Appellant has contended that the present appeal is not maintainable against him, as no cause of action whatsoever has been disclosed against him. The Appellant was neither a party to the Agreement to Sell nor to the Memorandum of Understanding, and



therefore, no liability or obligation can be fastened upon him in the present proceedings, and the proceedings are liable to be dismissed *qua* him.

25. It is evident that the Plaintiff has set out the necessary averments with respect to the cause of action in paragraph No. 16 of the plaint, thereby clarifying the cause of action pleaded by him against all the Defendants, including the Appellant. Paragraph No. 16 of the Plaint reads as follows:

*“16. That the cause of action for filing the present Suit arose in favour of the Plaintiff and against the Defendants when the Defendant Nos.1 to 4 executed the MOU dated 18.01.2012 with the Plaintiff herein and accepted a sum of Rs 5,00,000/-. It further arose when the defendant No. 4 refused to honour her commitments in terms of the aforesaid MOD as aforesaid. It further arose on 11.04.2012 when the Defendant Nos.1 to 3 entered into the Agreement to Sell in respect of the suit property with the Plaintiff herein and accepted the sum of Rs. 63,75,000/-, as aforesaid. It also arose when the plaintiff in March 2013 received another sum of Rupees 5,50,000/- ( Rupees five lacs fifty thousand ) vide two account payee cheques in the name of his wife which was to be adjusted against the sale consideration as stated above. It further arose when the Suit filed by Smt. Sangeeta Bhambani was dismissed by this Hon'ble Court on 26.03.2014. It also arose on 5.04.2014 when the plaintiff came to know about the pendency of disputes/litigation between the defendants No.1 and 2 on the one hand and defendants No. 5 on the other hand as well as about the fact that GPA and Agreement To Sell dated 24.02.1986 alleged to have been executed by late Sh. Surinder Sardana in favour of Defendant No.5 on the basis of which the DDA has executed Conveyance Deed dated 12.08.2013 are forged and fabricated documents as aforesaid. The cause of action also arose on 14.04.2014 when the Plaintiff came to know that the Defendant No.1 for himself and for other defendants is illegally trying to create third party interest in the suit property and is trying to hand over the possession of the same to some third party as detailed above. The cause of action is still continuing as the Defendants are still negotiating with some third parties for illegally creating third party right, title and interest in the suit property V. - during the subsistence of the aforesaid Agreement to Sell in favour of the Plaintiff herein.”*



26. The Appellant has prayed that the plaint ought to have been rejected as it was held not maintainable against him. It is no longer *res integra* that a plaint cannot be rejected in part, that is, only against some defendants or for certain portions. The scope of rejection under Order VII Rule 11 of the CPC extends to the plaint as a whole and not to isolated portions thereof. In the Judgement of **Geetha v. Nanjundaswamy**<sup>16</sup>, the Supreme Court observed that rejection of a plaint in respect of only part of the claim is impermissible. The relevant portion is extracted hereinbelow:

*“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 Maqsd Ahmad v. MathraDatt&Co. This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., 5 which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. 6 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 Directors Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that*

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<sup>16</sup>2023 SCC OnLine SC 1407



*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 advertng 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 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.*

xxxx                      xxxx                      xxxx                      xxxx

*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.”*

27. In relation to the Appellant’s contention of having perfected his title on the strength of the Conveyance Deed dated 12.08.2013, it is significant to note that both the Memorandum of Understanding dated 18.01.2012 and the Agreement to Sell dated 11.04.2012 had already been executed in favour of Respondent No.1/Plaintiff, much prior to the execution of the said Conveyance Deed. Therefore, the Appellant can be said to have acquired title, if at all, only upon execution of the Conveyance Deed on 12.08.2013, which was subsequent in point of



time to the Plaintiff's agreements. Moreover, the validity of the Conveyance Deed itself is derivative, as it rests upon the disputed ATS/GPA of 1986, the genuineness and enforceability of which are seriously in issue. In these circumstances, the Plaintiff's claim founded upon prior contractual rights cannot be rendered nugatory merely on the basis of a subsequent Conveyance Deed.

28. The Appellant has contended that his title regarding the suit property is no longer under challenge, since the suit filed by the Respondent Nos.2 and 3 has been dismissed by the District Judge, Saket Courts, New Delhi *vide* Order dated 01.12.2018. It be noted that the suit was not dismissed on merit; instead, it was dismissed for non-prosecution and failure of the legal representatives of late Shri Jatinder Sardana to appear and contest the suit.

29. Similarly, the Writ Petition instituted by the Late Sh. Jatinder Sardana against DDA and the Appellant was dismissed on account of wilful suppression of facts, and the said dismissal was affirmed in a Letters Patent Appeal. Nevertheless, this does not affect the maintainability of the present suit. Furthermore, since the Plaintiff was not a party to either the writ petition or the Letters Patent Appeal, the outcome of those proceedings is not binding upon him.

30. Accordingly, any *lis* instituted or concluded either prior to, or during the pendency of, the present suit concerning the suit property cannot prejudice the rights of the Plaintiff, nor can they affect the maintainability of the Plaintiff's suit.

31. On the issue of limitation, in the peculiar facts of this case, the



matter involves a mixed question of law and fact. In any event, as ATS was executed by the Respondent No.2 for himself and on behalf of Respondent Nos.2 and 3 on 11.04.2012, and the suit for specific performance came to be filed in the year 2014, the same is *prima facie* within limitation in terms of Article 54 of the Schedule to the Limitation Act, 1963.

32. Furthermore, the Appellant was arrayed as a party, as in his absence, the reliefs claimed in the plaint could not have been effectively adjudicated. Without his inclusion, Respondent No. 1 would have been entitled only to partial or ineffective relief, thereby defeating the very object of the suit.

33. The remaining submissions advanced by learned counsel for the Appellant can only be examined after the parties are allowed to lead evidence. It would therefore be inappropriate to deal with them at this preliminary stage or to reject the plaint under Order VII, Rule 11 of the CPC. The Appellant is free to raise such contentions in his written statement and during trial, when the suit is adjudicated on the merits.

34. Undoubtedly, the learned Single Judge has made certain observations with regard to the authenticity of GPA and ATS, allegedly executed by Late Sh. Surinder Kumar Sardana, in favour of the Appellant in the year 1986; however, such observations were neither necessary nor determinative at this stage.

35. Learned counsel for the parties have not made any other submissions.



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36. Accordingly, the present Appeal, along with pending applications, is dismissed.

37. Needless to observe that the Court of First Instance shall proceed to decide the suit uninfluenced by the observations made either in the Impugned Order or by this Court.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**SEPTEMBER 08, 2025/sg/er**