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

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Judgment reserved on: 04.08.2025

Judgment pronounced on: 18.08.2025

+ FAO(OS) 86/2025, CM APPL. 47237/2025 and CM APPL. 47238/2025

RAJESH RAJPAL

.....Appellant

4Through: Mr. P.D. Gupta, Sr. Adv. with
Mr. Atul Gupta, Adv.

versus

RAKESH RAJPAL & ORS.

.....Respondents

Through: Mr. Shivam Goel, Ms. Ramya
S. Goel and Ms. Sanya Sharma,
Adv. for R-1.

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 the present Appeal filed under Section 10 of the Delhi High Court Act, 1966, the Appellant assails the correctness of paragraph nos.15 and 36 of an interlocutory order dated 20.05.2025¹ passed by the learned Single Judge, in CS(OS) 324/2025 captioned *Rajesh Rajpal vs. Rakesh Rajpal & Ors.*². Vide the Impugned Order, the learned Single Judge deleted the property mentioned at S.No.7 of paragraph no.8 of the Plaint from the scope of the Civil Suit.

¹ Hereinafter referred to as 'Impugned Order'

² Hereinafter referred to as 'the Civil Suit'



Additionally, it was declared that the properties enlisted in paragraph nos.3 and 5 of the Plaint shall not be governed by rigours of Section 52 of the Transfer of Property Act, 1882³. The relevant paragraphs of the plaint are reproduced below:

“3. That in addition to the aforesaid properties/share therein, Late Mr. K.C. Rajpal also owned properties, detailed below:-

(i) bearing No.107, Sherawali Market, Sadar Bazar, Delhi and

(ii) bearing No. BG-5, Block-45A, Paschim Vihar, New Delhi-110063

The properties at S.No. (i) & (ii), were purchased in the name of Defendant No.2 and/or the wives of the Defendant Nos.1 & 2, with the consent of the family, though the sale consideration of the properties were being paid by Mr. K.C. Rajpal.

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5. That thereafter, all other siblings i.e. the Plaintiff and the Defendant Nos. 2 and 3 acting on the asking & assurance and of the Defendant No.1 being the eldest of the sons of Late Mr. K.C. Rajpal that the entire estate left behind by Mr. K.C. Rajpal shall be distributed equally amongst all the legal heirs at the appropriate stage from time to time executed certain documents effecting the transfer of certain properties. The details of the properties transferred and the documents executed are as under:-

S. No.	Description of Property	Beneficiary	Details of documents
1.	<i>B-5/44, Paschim Vihar, New Delhi-11063 admeasuring 250.84 Sq mtrs. (approx.)</i>	<i>First floor in favour of Defendant No.2</i>	<i>Relinquishment Deed dated 25.03.2009 executed by Plaintiff, Defendant No.1 & 3</i>
2.	<i>2760, Qutub Road, Sadar Bazar, Delhi – 110006 admeasuring 25.5 Sq Mtrs. (approx.)</i>	<i>Entire 50% of the father in favour of Defendant No.1</i>	<i>Relinquishment Deed dated 03.03.2008 executed by Plaintiff No.2 & 3</i>

³ Hereinafter referred to as ‘the Act’



			<i>(The other 50% was already owned by the Defendant No.1)</i>
3.	<i>B-5/43, Paschim Vihar, New Delhi-110063 admeasuring 278 Sq Mtrs. (approx.)</i>	<i>Defendant No.1</i>	<i>Relinquishment Deed dated 25.03.2009 executed by Plaintiff, Defendant No.2 & 3</i>
4.	<i>B-4/144, Paschim Vihar, New Delhi-110063 admeasuring 309.368 Sq. Mtr. (approx.)</i>	<i>Defendant No.1</i>	<i>Relinquishment Deed dated 03.07.2007 for 1/3rd share of the father executed by Plaintiff, Defendant No.2 & 3</i> <i>Gift Deed dated 03.07.2007 by the Plaintiff of 1/3rd share</i> <i>(The remaining 1/3rd was already owned by the Defendant No.1)</i>
5.	<i>1662-C, Govind Puri, New Delhi – 110019 admeasuring 95 Sq. Yrds. (approx.)</i>	<i>Defendant No.1</i>	<i>Relinquishment Deed dated 04.07.2008 executed by Plaintiff, Defendant No.2 & 3</i>

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8. That unfortunately the youngest of the siblings i.e. the Defendant No.3 died on 07.01.2024. It was after his demise that the Plaintiff approached the Defendant No.1 and 2 number of times for the distribution of the estate, as was assured/promised and the execution of the documents to effect the same, considering his own needs as well as the needs of the legal heirs of the deceased Defendant No.3

The properties, the distribution whereof were still to be made amongst the Plaintiff and the Defendant Nos. 2 and 3, after the execution of the afore-detailed documents are as under:-



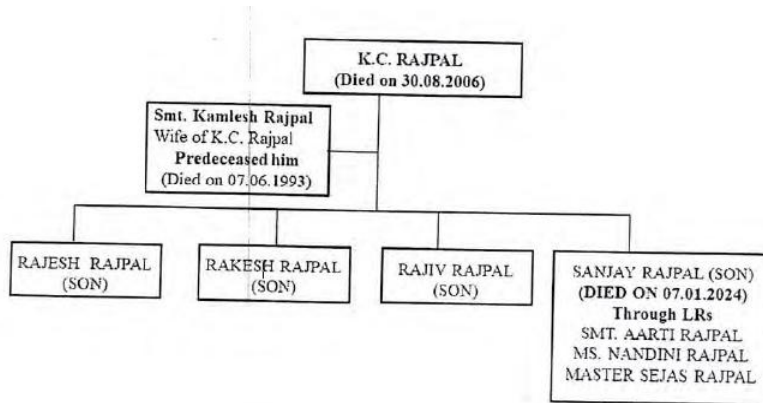
<i>S. No.</i>	<i>Description of Property</i>
1.	<i>B-4/56, Paschim Vihar, New Delhi-11063 admeasuring 200 Sq Yards (approx.)</i>
2.	<i>B-5/38, Paschim Vihar, New Delhi — 110063admeasuring 125 Sq Yards (approx.)</i>
3.	<i>55/4455, Reghar Pura, Karol Bagh, New Delhi – 110005admeasuring 50 Sq Yards (approx.)</i>
4.	<i>Stall No. 52, Ghaffar Market, Karol Bagh, New Delhi -110005</i>
5.	<i>B-5/44, Paschim Vihar, New Delhi — 110063admeasuring 250.84 Sq Mtrs. (approx.) Ground Floor Second Floor with roof rights</i>
6.	<i>2768, Qutub Road, Sadar Bazar, Delhi – 110006admeasuring 133 Sq Yards. (approx.)</i>
7.	<i>Property bearing No. 2761, Qutub Road, Sadar Bazar, Delhi — 110006 admeasuring 66 Sq.yards (approx.)</i>

2. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed by this Court. The dispute finds its genesis in the estate of Mr. K.C. Rajpal, who died intestate on 30.08.2006, leaving behind four sons namely Mr. Rajesh Rajpal (Appellant/Plaintiff), Mr. Rakesh Rajpal (Respondent No. 1/ Defendant No.1), Mr. Rajiv Rajpal (Respondent No. 2/ Defendant No.2) and Late Mr. Sanjay Rajpal through his LRs (Respondent No. 3/Defendant No. 3). The third son, Mr. Sanjay Rajpal also passed away on 07.02.2024, consequently, he is now being represented by his LRs, including his wife Ms. Aarti Rajpal and two minor children namely Ms. Nandini Nagpal and Master Sejas Rajpal. Upon the demise of Mr. K.C. Rajpal, it is contended that his estate has devolved upon Class I legal heirs with each having 1/4th share in the estate left behind by their father.



3. The Appellant owing to the familial dispute with respect to the estate left behind by Late Mr. K.C. Rajpal, filed a suit seeking a relief of partition, separate possession, mandatory and permanent injunction. The genealogy of the family of the parties at dispute, as mentioned under paragraph no.1 of the plaint is extracted and reproduced herein below:

“The family tree is as under:



”

4. Before delving into the merits of the case owing to which the parties have moved before this Court, it is deemed appropriate to consider the case made out by the Appellant before the learned Single Judge. In order to examine the extenuating circumstances that precipitated the present round of litigation, the Plaint filed by the Appellant before the learned Single Judge that forms a part of the pleading, as Annexure B, filed before this Court is read in whole and referred to accordingly.

5. Upon a perusal of the Plaint, it is abundantly clear that the Appellant claims that the father of the parties, late Mr. K.C. Rajpal, during his lifetime, acquired and owned various movable and immovable properties, all of which were purchased exclusively out of



his own funds. As many as 11 properties have been enlisted under paragraph no.2 of the Plaint to this effect. Additionally, in paragraph no.3 of the Plaint, as extracted above, the Appellant claims that late Mr. K.C. Rajpal was also the owner of two properties enlisted therein. Subsequently, the Appellant states that these properties were purchased in the name of Respondent No.2 and/or wives of Respondent Nos.1 and 2, although the sale consideration of these properties was paid by late Mr. K.C. Rajpal. Furthermore, it is also the case of the Appellant that the properties enlisted under paragraph no.5 of the Plaint were relinquished in favour of the Respondent No.1, in the manner as outlined in the table provided under paragraph no.5 of the Plaint. It is contended by the Appellant that the paragraph no.8 of the Plaint, provides a description of as many as seven properties and it is an admitted position in the Plaint that the property mentioned at S.No.7 thereof is owned and possessed by Respondent No.1.

6. It is not the case of the Appellant that the suit properties are joint Hindu family properties or coparcenary properties. The aforestated stand of the Appellant is substantiated by the following prayers:

“(a) A) Pass a preliminary decree of partition in respect of properties detailed in Para 11 above, thereby holding the plaintiff and the defendants to be the co-owners to the extent of 1/4th share each;

B) Pass a decree of partition in respect of the estate left behind by the deceased Mr. K.C. Rajpal in favour of the Plaintiff and against the Defendants after evaluating the excess amount of properties already transferred in favour of Defendant No.1 as well as the property transferred in favour of Defendant No 2.

The Defendant No.1 and 2 be also directed to execute Relinquishment Deed in favour of Plaintiff for the Second Floor along with roof rights and a Relinquishment Deed in favour of the



LRs of Defendant No.3 for the Ground Floor of the property bearing No. B-5/44, Paschim Vihar, New Delhi - 110063.

In the alternative to Prayer B

The documents executed by the Plaintiff and the other Defendants for the transfer of the title of the properties owned by the father be declared as null & void and a preliminary decree of partition holding Plaintiff entitled to 1/4th share in the entire estate detailed in Para 2 above, be passed;

C) appoint a Local Commissioner to inspect the suit property and suggest the ways and means to divide/partition the properties by metes and bounds;

OR

In the alternative, if the properties are found to be not divisible by metes and bounds, then the same be ordered to be put to inter se bidding between the parties, failing which a final decree may be passed;

D) Plaintiff be put into separate possession of his share in the properties;

E) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining them from creating any third party interest in the suit property in any manner.

F) Direct the Defendants for rendition of accounts in respect of the business of the father, the partnership firm and the company - M/s Rajpal Polytex Pvt. Ltd. incorporated under the Companies Act and the share of the Plaintiff be divided.

G) Pass a decree of mandatory injunction, thereby directing the defendants to hand over the original title deeds of the properties and not to misuse the blank signed papers of the Plaintiff;

H) Award costs of the proceedings throughout.”

7. Learned senior counsel representing the Appellant submits that the property at S.No.7 of paragraph no.8 has been erroneously deleted, and the learned Single Judge erred in declaring that the properties enlisted in paragraph nos.3 and 5 shall not be governed by rule of *lis pendens* as enshrined under Section 52 of the Act. Learned senior counsel further submits that the proceedings before the learned Single Judge were at a preliminary stage and that the Respondents, during the



pendency of the Civil Suit, did not even file an application under Order VII Rule 11 of the Code of Civil Procedure, 1908⁴. Upon such premise, it is contended by the learned senior counsel that a part of the Plaint cannot be rejected while exercising the enabling powers provided under Order VII Rule 11 of the CPC.

8. *Per contra*, learned counsel representing the Respondent No.1⁵ submits that the Appellant has unnecessarily involved the property at S.No.7 in paragraph no.8 of the Plaint, as well as the seven properties set out in paragraph nos.3 and 5. Learned counsel seeks to rely upon the judgment passed by the Supreme Court in *Vinod Seth vs. Devinder Bajaj & Anr.*⁶ in support of his submissions.

9. This Court has heard learned counsels representing the parties at length and with their able assistance, has perused the documents produced thereof in support of their submissions.

10. It is trite law that in the absence of an application under Order VII Rule 11 of the CPC, the power to strike out a part of the Pleading can be traced to Order VI Rule 16 of the CPC, which is extracted as under:

“16. Striking out pleadings-The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleadings-

- (a) which may be necessary, scandalous, frivolous or vexatious, of*
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or*
- (c) which is otherwise an abuse of the process of the Court.”*

11. Order VI Rule 16 of the CPC vests a discretionary jurisdiction

⁴Hereinafter referred to as ‘CPC’

⁵ The contesting Respondent

⁶ (2010) 8 SCC 1



to strike out the pleadings under specific circumstances as envisaged therein. This Rule contains three clauses out of which this Court deems it appropriate to place reliance on Clauses (a) and (c) of the Rule as reproduced above. A plain reading of Rule 16(a) goes on to reveal that the Court, at any stage of the proceedings, may strike out the part of pleadings which is deemed to be unnecessary, scandalous, frivolous or vexatious, whereas Rule 16(c) of the CPC enables the Court to strike out any part of the pleading, which is otherwise an abuse of the process of the Court. Accordingly, taking into consideration the provisions set out in this paragraph, this Court is of the view that the learned senior counsel for the Appellant is not correct in asserting that the power to strike out pleadings is referable to Order VII Rule 11 of the CPC.

12. The Supreme Court in *Sathi Vijay Kumar vs. Tota Singh & Others*⁷ noticed that the underlying object of Order VI Rule 16 of the CPC is to ensure that every party to a suit should present his pleading in an intelligible form without causing embarrassment to his adversary.

13. Similarly, the Supreme Court in *Abdul Razak (D) Thr. Lrs. & Ors vs. Mangesh Rajaram Wagle & Ors*⁸ cautioned that the power of striking out pleading should be exercised with extreme care, caution and circumspection.

14. A meticulous reading of the Complaint discloses that the Appellant does not claim that the properties enlisted in paragraph no.3 were purchased benami by late Mr. K.C. Rajpal, in the name of Respondent

⁷ (2006) 13 SCC 353

⁸ (2010) 2 SCC 432



No.2 and/or wives of Respondent Nos.1 and 2. Consequently, any attempt of recovery of the properties purchased in the name of son and two daughter-in-laws would not succeed, particularly, in view of the provisions of Prohibition of Benami Property Transactions Act, 1988.

15. Similarly, with respect to property no.7 in paragraph no.8, learned Single Judge has disclosed that property at S.No.7 is registered in the name of Respondent No.1. The Appellant does not dispute this fact. Though, the Appellant, in paragraph no.5 of the Plaint, claims that the Respondent No.1 dishonestly got transferred to himself properties exceeding his rightful $\frac{1}{4}$ share from other siblings, however, property no.7 in paragraph no.8 is not included in the properties enlisted in paragraph no.5 of the Plaint.

16. With respect to the properties enumerated under paragraph no.5, it is expressly acknowledged that the transfer of these properties to Respondent no.1 took place pursuant to Relinquishment Deeds dated 25.03.2009, 03.03.2008, 03.07.2007 and 04.07.2008 along with a gift deed dated 03.07.2007, executed jointly by the Appellant and Respondent Nos. 2 and 3. While the Appellant contends that neither of the brothers formally requested the Respondent no.1 to effectuate the transfer of title in their favour as agreed upon, however, the execution of the Relinquishment Deeds along with the Gift Deed remains unchallenged and thus stands as an admitted fact.

17. In absence of prayer to annul/cancel the Relinquishment Deeds and the Gift Deed in terms of Section 31 of the Specific Relief Act, 1963, which involved payment of *Ad Valorem* Court Fee, the suit for partition *qua* the properties which are in the name of individuals will



not be maintainable. The Appellant has filed a suit for grant of decree of declaration in terms of Section 34 of the Specific Relief Act, 1963; however, if the Appellant, who is one of the executants, wishes to avoid or seek annulment of a document transferring the property, a Civil Suit in terms of Section 31 of the Specific Relief Act, 1963 seeking cancellation or annulment of the document is required to be filed.

18. Keeping in view aforesaid discussion, this Court does not deem it appropriate to interfere with the Impugned Order passed by learned Single Judge.

19. However, this order shall not be construed as final expression on the merits and the Appellant on leading evidence shall have liberty to file an application for inclusion of property no.7 in paragraph no.8 and applicability of rigours of Section 52 of the Act with the properties enlisted under paragraph nos.3 and 5 of the Plaint, if found necessary.

20. The Appeal, along with pending applications, is accordingly dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 18, 2025/jn/hr