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

% ***Judgment reserved on: 20th August 2026***
Judgment pronounced on:17th September 2026

\# **CNR No. DLHC010165132019**

\+ **EX.F.A. 12/2019 & CM APPL. 14756/2019**

PREM MEHANI & ANR .....Appellants

Through: Mr. Tishampati Sen with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma and Mr. Dhairyam C. Shroff, Advocates.

versus

HARISH BATRA & ORS. .....Respondents

Through: Mr. Rahul Gupta, Mr. Shekhar Gupta, Mr. Mridul Vats and Mr. Vasu Goel, Advocates for R-1 & 2.
Mr. Dinesh Kothari, Adv. LR for R-3.
Mr. Parv Garg, Mr. Pawas Kulshrestha and Mr. K.S. Rekhi, Advocates for R-4.

\# **CNR No. DLHC010165552019**

\+ **RFA 277/2019**

PREM MEHANI & ANR .....Appellants

Through: Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Anurag Anand, Mr. Mukul Kulhari and Ms. Manya, Advocates.

versus

HARISH BATRA & ORS .....Respondents

Through: Mr. Rahul Gupta, Mr. Shekhar Gupta, Mr. Mridul Vats and Mr. Vasu Goel, Advocates for R-1 & 2.
Mr. Dinesh Kothari, Adv. LR for R-3.
Mr. Parv Garg, Mr. Pawas

Kulshrestha and Mr. K.S. Rekhi, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

RFA 277/2019

1. The present appeal assails the order dated 14th March 2019 passed by the Additional District Judge-01, South-East, Saket Courts ("Trial Court") whereby the plaint filed by the appellants, being CS No.11835/2016, was rejected under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 (hereinafter 'CPC').

2. The brief facts necessary for deciding the present appeal are as follows:

2.1. The appellant no.1 and the respondents no.3 to 6 are the members of the Mehani family and descendants of Late Sh. Kush Dayal Mehani. The respondents no.3, 4 and 5 are brothers and the appellant no.1 and respondent no.6 are the sons of respondent no.3.

2.2. The appellant's grandfather, Late Sh. Kush Dayal entered into a partnership deed dated 21st October 1980 with Mr. Yash Pal Mehani (respondent no.3), Mr. Prakash Chand Mehani (respondent no.4), Mr. Jagdish Chander Mehani (respondent no.5), and Mr. Satish Kumar Mehani (respondent no.6) in order to form a partnership concern in the name and style of 'M/s Dayal Sales Corporation' (hereinafter 'DSC').

2.3. DSC, through its partners, acquired leasehold rights in the property bearing no. *D-150, Okhla Industrial Area, Phase-I, New Delhi, admeasuring 302.22 sq. metres* (hereinafter 'suit property') through a perpetual lease deed dated 13th May 1986, which was executed by the Delhi Development Authority ('DDA') in favour of DSC.

2.4. On 26th October 1986, the appellant's grandfather, Late Sh. Kush Dayal passed away and the respondents no.3 to 6 reconstituted their partnership *vide* a reconstituted partnership deed dated 28th October 1986. However, the business operations and functions of DSC at the suit property continued to be managed and controlled by the appellant no.1 and the suit property continued to remain in his possession.

2.5. Due to a continuous family dispute, the respondent no.5 claimed a separate share in the family property and consequently a family settlement agreement dated 8th July 2001 was entered into by and between all the parties wherein the property was distributed and demarcated between the various members of the Mehani family.

2.6. Mr. Satish Kumar Mehani, who is the respondent no.6 in the present appeal, filed a suit seeking partition concerning the suit property, being CS(OS) 319 of 2010 titled as ***"Satish Kumar Mehani* v. *Prakash Chander Mehani & Ors."*** wherein the appellants are parties.

2.7. An Agreement to Sell dated 8th May 2006 (hereinafter 'ATS') was entered into by DSC through the respondents no.3 and 4, in favour of the respondents no.1 and 2 for the sale of the suit property.

2.8. The respondents no.1 and 2 filed a suit, being CS(OS) No.1403/2008, seeking specific performance of ATS against DSC and the respondents no.3 and 4.

2.9. On 7th December 2012, a consent decree/order was passed in the aforesaid suit. The decree contemplated payment of Rs.1.90 crore to respondents no.1 and 2 within three (3) months, with interest in case of default, and further provided that in the event of failure to make payment, the respondents no.1 and 2 would become entitled to specific performance and execution of the sale deed upon payment of the balance consideration.

2.10. The plaintiffs thereafter instituted the present suit, being CS No.11835/2016, seeking a declaration that the consent decree dated 7th December 2012 was a nullity, having been obtained by concealment of material facts and fraud. Further, relief of injunction concerning the suit property was also sought in the said proceedings.

2.11. The defendants no.1 and 2 moved an application under Order VII Rule 11(a) and (d) CPC seeking rejection of the plaint, which came to be allowed in terms of the impugned judgment dated 14th March 2019.

3. Aggrieved by the aforesaid, the present appeal has been filed.

PROCEEDINGS BEFORE THIS COURT

4. Notice in the appeal was issued *vide* order dated 1st April 2019.

5. Applications under Order 22 Rule 4 of CPC, being CM No.4936/2023 and CM No.238277/2023, were filed on behalf of the appellants for bringing on record the legal representatives (LRs) of the deceased respondents no.3 and 5. The LRs were brought on record *vide* order dated 16th December 2024.

6. The appeal was heard before this Court and the judgment was reserved on 20th August 2026.

SUBMISSIONS OF THE APPELLANTS

7. Pursuant to the aforesaid Family Settlement dated 8th July 2001 and certain subsequent oral arrangements, the appellant no.1 acquired a 25% interest in the suit property and continued in possession thereof.

8. In the reply dated 5th October 2006 to the legal notice sent by respondents no.1 and 2, the appellant no.1 asserted that he was in possession of the suit property and was carrying on his independent business therefrom and expressly stated that he was not bound by the ATS. The communication dated 27th October 2008 addressed by the appellants to the respondent no.1 also asserted that he was in exclusive physical possession of the entire premises from where he was carrying on his own business.

9. The Trial Court erred in rejecting the plaint at the threshold as the suit was founded not upon the ATS but upon the subsequent consent decree dated 7th December 2012, which, according to the appellants, was obtained by fraud and concealment.

10. The suit is not barred by limitation as has been erroneously held by the Trial Court. The actual cause of action in the instant case arose when the consent decree dated 7th December 2012 was passed by the Trial Court. The application under Order 7 Rule 11 of CPC was filed by the defendants after a period of 5 years to stall the proceedings in the suit.

11. The question whether the appellants had knowledge of the relevant facts constituting the alleged fraud, and the effect of such knowledge upon limitation, could not have been conclusively determined without trial. The plaint contained specific averments concerning the Family Settlement, the appellants' 25% interest and their possession.

SUBMISSIONS OF THE RESPONDENTS

12. The suit is barred by limitation as the appellant was aware of the ATS since the beginning and more particularly w.e.f. 29th September 2006, when a legal notice was sent by the respondents no.1 and 2 to the appellant no.1

stating that an ATS has been entered into between the said respondents and DSC. In fact the appellant no.1 wrote a letter dated 5th October 2006 in response to the respondents' letter stating that he is not bound by the said ATS.

13. The appellant no.1 was also aware of the filing of the suit for specific performance being CS(OS) 1403/2008 when admittedly he received a copy of the plaint on 25th July 2008. The appellant even wrote a letter dated 27th October 2008 in response to the same.

14. The appellants had knowledge of the ATS from 2006 and of the specific-performance suit proceedings from 2008, yet they neither asserted any ownership rights in the suit property nor did they take any steps to enforce the family settlement dated 8th July 2001. The appellants also did not take any steps to implead themselves in CS (OS) 1403/2008.

15. At the time of execution of ATS, the suit property was mortgaged with a bank and original title deed documents were lying with the said bank on account of loan facilities availed by DSC. The respondent no.1 has paid the amount to the bank on behalf of DSC under the ATS and got the suit property free from mortgage. The title documents were thereafter handed over to the respondent no.1 and are till date with him. However, the appellants have been silent on the same.

16. The appellants' claim is a belated attempt to defeat the fruits of a consent decree which has remained unchallenged by any party thereto. The respondents also rely upon the payments made pursuant to the Agreement to Sell and the decree.

ANALYSIS

17. I have heard the counsel for the parties and perused the material on record.

18. The appellants filed the present suit seeking setting aside of a consent decree dated 7th December, 2012, passed in CS(OS) 1403/2008, on the ground that the same was obtained on account of collusion between respondents in the present case, who were parties in the said suit. CS(OS) 1403/2008 was filed by respondents no.1 and 2 herein, seeking specific performance of the ATS executed by DSC and its partners, respondents no.3 and 4 herein.

19. The Trial Court held that the appellants, despite having knowledge of the aforesaid ATS, as is evident from their letter dated 5th October, 2006, did not initiate any legal proceedings challenging the same or asserting their rights in the suit property. The Trial Court also observed that appellant no.1 had knowledge of the aforesaid civil suit for specific performance, filed by respondent no.1, as is reflected from the appellant no.1's letter dated 27th October, 2008, yet did not take any steps to seek impleadment in the aforesaid suit despite claiming rights in the subject property. It is only after a consent decree was passed in the aforesaid suit that the appellant no.1 has filed the present suit for setting aside the consent decree.

20. The appellants were trying to assert their rights in the suit property on the basis of a family settlement dated 8th July, 2001. It was also pleaded in the plaint that the reconstituted partnership deed dated 1st May 2005 was in breach of the aforesaid family settlement and the respondents no.3 and 4 wrongfully entered into ATS with the respondents no.1 and 2 in respect of the suit property. In this regard, reference may be made to paragraph 5 of the

plaint, dealing with the cause of action, which is set out below:

> *"5. The cause of action arose when Partnership Deed of DSC dated 21 October, 1980 was executed. The cause of action further arose when Okhla property was acquired by the family through DSC under the Perp(3tual Lease Deed dated 13th May, 1986. The cause of action further arose when Plaintiff No. 1 started working from the Okhla Property in the year 1985.* ***The cause of action further arose when, on 8th July, 2001 family settlement was arrived at between the members of the Mehani Family. The cause of action further arose when, under the oral agreement in September- October, 2001, it was agreed that 25% of Okhla Property. The cause of action further arose when Defendant Nos.3 and 4 executed a fresh Partnership Deed dated 5th May, 2006 in a clear breach of the understanding arrived at in the Family Settlement and the subsequent Oral agreements. The cause of action further arose on 8th May, 2006 when Defendant Nos. 3 and 4 allegedly entered into an agreement to sell with Defendant No.1 relying upon forged and fabricated partnership deed in the name of DSC, the original allottee of the Okhla Property. The cause of action further arose when Defendants Nos.1 and 2 instituted a civil suit bearing CS (OS) NO. 1403 of 2008 without impleading the Plaintiffs as party to the proceedings, and by actively concealing material facts in its plaint in order to induce an order/decree in its favour.*** *The cause of action further arose when Defendants No.3 and 4 filed their respective written statement in which they also actively concealed material facts. Cause of action further arose when on 7th December, 2012, Defendants Nos. 1 to 4 colluded together to obtain a consent order by playing a fraud on this Hon'ble Court. The cause of action further arose on 30th December, 2012 on which date Defendant No.3, through his advocate addressed an email to the Plaintiff, inter alia, sending a proposed settlement agreement for review, with the intention of pressurising the Plaintiffs to give up their share in the Okhla Property. It is submitted that the cause of action is alive and continuing."*
>
> [Emphasis supplied]

21. A reading of the aforesaid paragraph discloses that the cause of action arose in favour of the plaintiff on 8th July, 2001, when the family settlement was entered into; 1st May, 2006 when the reconstituted partnership deed was

entered into; 8th May, 2006 when the ATS was entered into and finally on 29th September 2006 when a legal notice was received by the appellant no.1 and he came to know that ATS has been entered into, to which he replied on 5th October 2006. The cause of action further arose when the appellants came to know about the filing of the suit for specific performance by the respondents on 27th October 2008.

22. It is an admitted position that the suit property belongs to the partnership firm, DSE, in which the appellant no.1 was not a partner. The only basis on which the appellants could have claimed rights in the suit property was on the basis of the family settlement. However, the appellants have failed to initiate any legal proceedings so as to assert their right under the said family settlement.

23. The present suit was filed on 29th May 2013, only after a consent decree was passed in CS (OS) 1403/2008 on 7th December, 2012. Having chosen to remain silent for all these years despite being fully aware of the ATS and the suit for specific performance, the appellants cannot be permitted to deny the fruits of the consent decree to the respondents no.1 and 2. There is no gainsaying that even if a consent decree in CS(OS) 1403/2008 is set aside, the appellants will not get any rights in the suit property.

24. The Supreme Court, in ***T. Arivandandam* v. *T.V. Satyapal***[1], has dealt with the scope of Order VII Rule 11 CPC in cases where the plaint is vexatious or does not disclose a clear right to sue. The relevant observations are as under:

[1] (1977) 4 SCC 467.

*"**5.** We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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** by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:*

"It is dangerous to be too good."

[Emphasis supplied]

25. A reference may also be made to the judgment of the Supreme Court in ***Dahiben* v. *Arvindbhai Kalyanji Bhanusali and Ors.*,**[2] wherein the following observations have been made:

"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.

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

[2] (2020) 7 SCC 366.

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 which reads as : (SCC p. 562, para 139)

*"139. **<u>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.</u>** 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. 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.

<u>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.</u>

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. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case.

***<u>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</u>**."*

[Emphasis supplied]

26. A holistic reading of the plaint leads to an inescapable conclusion that

it is nothing but a case of clever drafting that the appellants have filed the present suit, challenging the consent decree when the real purport of the suit is to agitate the rights of the appellants in the suit property. The real cause of action for the plaintiff to challenge the ATS arose in 2006 and again in 2008, which he did not, despite knowledge of the same. To overcome the same, the plaintiff filed the plaint in the present suit in 2013 to challenge the consent decree passed in CS(OS) 1403/2008 on 7th December 2012.

27. The consent decree, therefore, cannot furnish a fresh cause of action so as to revive a claim which had already accrued to the appellants and in respect of which the appellants did not take any action. The filing of the present suit in 2013, couched as a challenge to the consent decree, cannot circumvent the bar of limitation applicable to the underlying causes of action.

28. The findings of the Trial Court with regard to the aforesaid are set out below:

> *"15.2 **Despite having knowledge of Agreement to Sell on or before 05.10.2006, no suit was filed by the plaintiff No. 1 seeking declaration that he was having ownership rights in the suit property and consequent relief that the agreement to sell** in favor of defendant no.l and 2 be declared null and void. Hence, the said time barred relief can not be claimed by filing present suit for declaration of decree as nullity, thus adopting a circuitous route to the same reliefs.*
>
> *15.3 Not only that, **the plaintiff No. 1 was also having due knowledge of the pending civil suit filed by defendant No. 1 against DSC, defendant Nos. 3 and 4 which is evident from letter received by him on 25.07.2008 to which responded on 27.10.2008**…*
>
> *15.4 **Having got knowledge of the pending litigation, it was expected that plaintiff No. 1shall seek his impleadment as a party in the said civil suit for Specific Performance, as it pertained to the suit property,***

<u>wherein he was claiming legal rights. No steps were taken by the plaintiff in this regard. Having slept over his rights for almost 5 years, the plaintiffs' instant case seeking nullity of order dated 07.12.2012 cannot be entertained. Hence, plaint is barred by limitation.</u>

[Emphasis supplied]

29. In light of the discussion above, in my opinion there is no infirmity in the finding of the Trial Court that the suit was completely barred by limitation and consequent thereto, rejection of the plaint under Order VII Rule 11 of CPC.

30. Accordingly, the appeal is dismissed.

<u>EX.F.A. 12/2019 & CM APPL. 14756/2019</u>

31. This appeal assails the order dated 15th March 2019 passed in Execution Petition No.399/2017, whereby the appellants' application seeking their impleadment/objecting to execution was dismissed.

32. After passing of the consent decree dated 7th December 2012 in the suit for specific performance, being CS(OS) 1403/2008, the respondents no.1 and 2 instituted Execution Petition No.399/2017 for execution of the said decree.

33. In the proceedings before the Executing Court, the appellants filed an application seeking their impleadment, objecting to execution and a separate application seeking desealing of the suit property. By order dated 15th March 2019, the Executing Court dismissed the appellants' application for impleadment. At the same time, the Court allowed the application for desealing, observing that the decree holders were concerned only with execution of the decree and not with the movable goods lying in the premises. The operative part is set out below:

"Application seeking impleadment is primarily on the grounds of

*ownership rights of the objector in property bearing no. D- 150, Okhla Industrial Area Phase-I (in short 'Okhla Property'). **<u>So far as ownership rights are concerned, as the civil suit no. 11835/16 filed by the plaintiff has been rejected, wherein the plea of ownership has been discussed at length and dismissed on grounds of limitation, the application moved by the objector objecting to execution of decree and to array him as a party in the execution proceedings is dismissed. Accordingly, application is disposed of.</u>***

So far as the issue of desealing of the Okhla property is concerned, it is pertinent that the possession of the property was under dispute, while DH had stated that it was lying vacant and locked, it was stated by objector that his goods were lying therein and his locks had been put on the back gate of the Okhla property, in which sq. meter be issued on filing of PF and affidavit of no stay. Concerned SHO is directed that necessary assistance may be given to the Bailiff for proper execution of the warrants. Bailiff is at liberty to deseal the premises/ break open locks/ remove any hindrance for smooth execution of warrants of possession. Further, the moveable property lying therein shall be handed over to superdar after making a list of the same."

[Emphasis supplied]

34. Aggrieved by the dismissal of the impleadment application, the present appeal has been filed.

35. Notice in the appeal was issued *vide* order dated 2nd April 2019, on which date the directions passed in the impugned order dated 15th March 2019 were stayed.

36. *Vide* order dated 19th November 2019, the appeal was directed to be listed alongside RFA 277/2019 on the basis of submission of the parties that both the proceedings are arising out of the same dispute between the same set of parties.

37. In view of my findings above in RFA 277/2019, the appellants cannot be permitted to raise, at the stage of execution, substantially the same claim which formed the subject matter of the suit filed by the appellants, being CS

No.11835/2016, and which has been held to be rightly rejected by the Trial Court.

38. Accordingly, the present appeal is also dismissed.

39. The interim order dated 15th March 2019 passed by this Court stands vacated. The Executing Court shall proceed with the execution of the decree in accordance with law.

40. Pending application stands disposed of.

AMIT BANSAL
(JUDGE)

SEPTEMBER 17, 2026
at