



2026:DHC:8963



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

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Reserved on: 21st August, 2026
Pronounced on: 09th October, 2026
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CNR No.DLHC010650132024

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RFA 656/2024, CM APPL. 56907/2024

MRS. RADHA GOYAL

D/o Late Sh. Dinesh Chand Goyal

W/o Shri Amit Garg

R/o 1682/2, LGF Govind Puri Extension

Kalkaji, New Delhi-110019.

.....Appellant

Through: Mr. K.K. Bhati, Mr. Trilok Nath
Saxena, Ms. Shalu Bhati, Dr. Shiv
Kumar Tiwari, Advocates.

versus

1. **GAURAV GOYAL**

S/o Late Shri Dinesh Chand Goyal

R/o 1691/2, Gopal Ice Cream,

Gopal House, Govind Puri Extension,

Kalkaji, New Delhi-110019.

2. **MRS. UMA GARG**

D/o Late Sh. Dinesh Chand Goyal

W/o Shri Mukesh Garg

R/o L-15 Third Floor, Kalkaji,

New Delhi-110019.

.....Respondents

Through: Ms. Neelakshi Bhadauria, Mr. Sarthak
Karol, Ms. Tanishka Pawar, Mr.
Shashank Sharma, Advocates for R-1



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present **Regular First Appeal** under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed by the *Plaintiff/Appellant, Mrs Radha Goyal*, against the Judgment and Decree dated **18.05.2024**, passed by the learned *District Judge, Delhi*, whereby the Suit of the Plaintiff/Appellant for *Partition, Possession, Rendition of Accounts, and grant of Permanent Injunction*, was rejected under *Order VII Rule 11(b) and (d)* of CPC.
2. The Plaintiff filed the **Suit bearing CS No. 150/2014 for Partition** before the court of *learned ASCJ* wherein Notice was issued against the Defendants. The Defendant No. 1, in his Written statement, took various objections in regard to the jurisdiction of the Court by asserting that the value of the suit property was more than ₹3,00,00,000/- and the suit was beyond the territorial jurisdiction of the learned Judge.
3. The learned, ASCJ passed the Order dated **26.05.2014** by the virtue of which, the **Suit CS No. 150/2014 was dismissed as withdrawn with the liberty to the Plaintiff to file a fresh before the Competent Court**. The **Suit bearing No. 2442/14** was filed by the Plaintiff before this Hon'ble Court on **14.08.2014**. The Plaintiff, Mrs. Radha Goyal, thereafter filed the **Suit bearing CS (OS) No. 2442/2014** filed before this Court on **14.08.2014** for *Partition, Possession, Rendition of Accounts, and Grant of Permanent Injunction*. However, *vide Order dated 09.02.2016*, it was directed by this



Court to be transferred to District Court, Delhi as the suit for partition was valued at less than Rs. 2,00,00,000/-.

4. The Plaintiff, Mrs. Radha Goyal then filed **Civil suit bearing No.53/2017** seeking a decree of **Partition, Possession, Rendition of accounts and grant of Permanent Injunction** against Defendant No. 1/Respondent No. 1 i.e. Sh. Gaurav Goyal and Defendant No. 2/Respondent No. 2 i.e. Mrs. Uma Gargin respect of:

- (i) property bearing No. 1675/2 Govind Puri Extension Kalkaji, New Delhi; ad-measuring about 170 sq. yards;
- (ii) Entire property including Shop No. 1 to 4 of the property bearing No. 1691/2 Govind Puri, Extension, Delhi; ad-measuring 200 sq. yards;
- (iii) Flat No. B-3 Ganga Vatika, LaxmanJhula Road, Rishikesh, Uttarakhand;
- (iv) Cash and other valuables left behind by the parents of the parties; and
- (v) the income generated by the Defendant No. 1 from the business "Gopal Ice Cream" and the income generated by Respondent No. 1/Defendant No. 1 by renting out parts of the above noted immovable properties; (hereinafter referred as "suit properties").

5. The **Defendant No. 1 filed an Application before this Court, under Order VII Rule 11 read with Section 151 CPC and under Section 8 of the Suits Valuation Act, 1887**. The Rejection of the Suit was sought on the ground that the Plaintiff had not valued the suit for the purpose of Court fees and jurisdiction properly, as she had failed to disclose the value of the



property in respect of which she had sought Partition and Rendition of Accounts. However, during the arguments on I.A. No. 17987/2014, the counsel of Defendant No.1 withdrew the Application and it was dismissed as withdrawn, *vide* Order dated **13.03.2015**.

6. The Plaintiff asserted that her father, *Sh. Dinesh Chand Goyal* and the mother, *Mrs. Rajni Goyal* were joint owners in respect of **Property No (i)**. The father was the owner of **Property No. (ii) and(iii)**.

7. The father had also been running a business the name and style of “*Gopal Ice Cream*” as the proprietor at the aforesaid shops. It was claimed that all the aforesaid properties were self-acquired properties of the father, late *Shri Dinesh Chand Goyal*. The father i.e. *Sh. Dinesh Goyal* and mother, *Mrs. Rajni Goyal*, died intestate on **13.02.2006** and **17.12.2010** respectively.

8. The Defendant No. 1, *Gaurav Goyal*, the brother and Defendant No. 2, *Mrs. Uma Garg*, is the sister of the Plaintiff. The movable and immovable assets of *Dinesh Goyal* and *Mrs. Rajni Goyal* devolved on all the legal heirs in equal share, as per the Hindu Succession Act, 1956 and ought to be distributed amongst all the legal heirs as per law.

9. The Plaintiff got married in 2008, though she got separated by way of divorce, wherein she got **₹11,00,000/-** as alimony. The Plaintiff got remarried on 20.03.2010 and since her second marriage was a love marriage, no dowry article was given in her marriage. However, from the above alimony, the Plaintiff purchased a *flat bearing No. 1682/2, LGF, Kalkaji, Delhi* in her name.

10. After marriage, the Plaintiff requested the Defendants to mutually partition the suit properties by metes and bounds and give her respective shares in the suit properties, to which Defendant No. 1 stated that the



Plaintiff would have to sign some documents, for the purpose of Partition of properties and business. Accordingly, the Plaintiff, at the behest of Defendant No. 1 and in good faith, signed some blank documents innocently. However, when the Plaintiff again approached Defendant No. 1, he did not agree to Partition and did not even admit the claim of Plaintiff over the suit properties and business, since he had an intention to misappropriate the suit properties after selling it to third parties and he was already in negotiation with several parties in the locality, for disposing of the suit properties.

11. The Plaintiff claims that as a counter-blast, **Defendant No. 1 filed false and frivolous Suit bearing No. 300/2014** against the Plaintiff, in respect of the flat which had been purchased by the Plaintiff in her name from her own alimony, which is pending adjudication in the court of *ADJ, Saket Court*, though Defendant No. 1 claimed it to have been purchased by him.

12. The **Suit** was contested by the **Defendant No. 1**, who in his **Amended Written Statement**, took the *preliminary objection* that the suit is *not maintainable* as the Suit had not been properly valued and has *not paid the proper court fees*, as the Plaintiff was not in possession of any portion of the property for which she has sought the partition; that this Hon'ble Court did *not have pecuniary jurisdiction* to entertain the suit; and the suit was *barred by time*.

13. An objection was also taken that the Plaintiff has verified the Plaint as true and correct on oath, knowing that those are false and the Plaintiff is liable to be prosecuted under *Section 340 of Code of Criminal Procedure, 1973 for perjury*.



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14. Further, the Defendant No. 1 took the objection that the Suit of the Plaintiff is not maintainable *without seeking decree of Declaration* in respect of the property which stood transferred *vide* Gift Deed dated **17.11.2009** of which the Plaintiff herself has been a witness.

15. The Defendant No. 1 further asserted that the plaint is without any cause of action and is liable to be rejected under *Order VII Rule 11 CPC*.

16. The Defendant No. 1 also took the objection that the **Property (i)** has been built by the parents of Defendant No. 1 and was not jointly owned by mother and father of the parties, but they had their separate portions, *vide* separate Sale documents. It was asserted that **Shop No. 3 of property No. 1691/2** is an individual property of Defendant No. 1 and **the business under the name and style of 'M/s Gopal Ice Cream'** was also earlier in partnership which stood dissolved and thereafter, the Defendant No. 1 became its sole proprietor. Further, the property bearing **No.1691/2, Govind Puri Extension, Delhi** belongs to the Defendant No. 1 and it is purchased by him. So far as **Property (iii)** is concerned, it was built by his father, *Sh. Dinesh Chand Goyal* and mother, *Mrs. Rajni Goyal* and is well within the knowledge of the Plaintiff, as well as the Defendant No. 2.

17. It was asserted that the **following properties** by the virtue of Wills, was bequeathed in favour of Defendant No. 1:

Particulars of Property	Particulars of Will	Status of Property
1. 1675/4A measuring 40 sq. yards	Will Dated 11.03.2002	Defendant No. 1 executed sale deed dated 18.08.2006 in favour of his wife and thereafter she conveyed it back to Defendant



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		No. 1 vide Gift Deed dated 17.11.2009 . <i>The said Gift Deed has been witnessed by the Plaintiff.</i>
2. 1675/4 measuring 40 sq. yards	Separated Will dated 11.03.2002	-
3. 1675/4, Govind Puri Extension, New Delhi measuring 45 sq. yards	Will dated 17.04.2002	Defendant No. 1 executed sale deed dated 18.08.2006 in favour of his wife and thereafter she conveyed it back to Defendant No. 1 vide Gift Deed dated 17.11.2009 . <i>The said Gift Deed has been witnessed by the Plaintiff.</i>
4. Godown in property bearing No. 1691/2 i.e. Shop 1 & 2	Will dated 11.02.2002	Defendant No. 1 executed sale deed in favour of his wife and thereafter she conveyed it back to Defendant No. 1 vide Gift Deed. <i>The said Gift Deed has been witnessed by the Plaintiff.</i>
5. Shop No. 4, property No. 1691/2 ad-measuring 10 ft. x 10 ft.	Separate Will dated 11.02.2002	Defendant No. 1 executed sale deed in favour of his wife and thereafter she conveyed it back to Defendant No. 1 vide Gift Deed. <i>The said Gift Deed has been witnessed by the Plaintiff.</i>
6. Entire estate of the father i.e. Sh. Dinesh Goyal	Will dated 26.04.2003	Bequeathed in the favour of the Defendant No. 1 and disinherited all other legal heirs and as such the Plaintiff and Defendant No. 2 had no right or share in any property or business.



18. Further, the Defendant No. 1 purchased the **Shop No. 3 of 1691/2**, vide Sale Deed dated **24.05.2011** for consideration amount of **Rs. 35,00,000/-**. Similarly, property **bearing No. 1691, Gali No. 2** measuring 200 sq. yards out of Kharsa No. 25, situated at **Govind Puri Extension, Kalkaji, New Delhi** was purchased by Defendant No. 1 from his own funds, vide Sale Deed dated **13.05.2011**, for consideration amount of **Rs. 75,00,000/-**. Therefore, the Plaintiff and Defendant No. 2 had nothing to do with the said properties.

19. *On merits*, the Defendant asserted that Sh. Amit Garg, who is the present husband of the Plaintiff, owes lakhs of rupees to the Defendant No. 1 and since the Defendant No. 1 was demanding his money, the Plaintiff filed the false and frivolous suit.

20. It was asserted that the estates of the deceased parents were bequeathed in favour of Defendant No. 1 by the virtue of the Wills and that neither the Plaintiff, nor the Defendant No. 2 has anything to do with the estate left behind by the parents.

21. The Defendant No. 1 further denied that no dowry was given, when the Plaintiff re-married on 20.03.2010. The **Flat no. 1682/2, LGF, Kalkaji, Delhi** was purchased in the name of Plaintiff, but the whole amount was paid by Defendant No.1 and the Plaintiff had promised to pay it back within one year or else agreed to transfer the property to Defendant No. 1, who entered into the Agreement to purchase and paid the amount. It is further denied that Defendant No. 1 ever asked the Plaintiff to sign some blank



papers/documents for the purpose of the partition of properties and business, or that the Plaintiff innocently signed the documents.

22. *The Defendant No. 1 accordingly, prayed for dismissal of the suit with exemplary cost.*

23. The Plaintiff filed her **Replication**, wherein she reiterated the averments made in the Plaint and denied the assertions contained in the Amended Written Statement filed by the Defendant No. 1. The Plaintiff asserted that the Defendant No. 1 does not want to give the share to his sisters i.e. Plaintiff and Defendant No. 2 and had not come with clean hands before the Hon'ble Court.

24. The Plaintiff asserted that the parents of the parties died intestate and there is no question of any Will being executed in the favour of the Defendant No. 1, with respect to the suit properties. Further, it was stated by the Plaintiff that the annexed Wills with the Written Statement, are false and forged and baseless and the Defendant No. 1 did not obtain the Probate in respect of these alleged Wills from the competent court, because the same are forged.

25. The following **Issues** were framed, on 12.12.2019:

1. *“Whether the suit is bad for want of proper court fees? OPD*
2. *Whether the suit is bad in view of four wills, all dated 11.03.2020 executed by parents of the parties in favour of the Defendant No. 1? OPD*
3. *Whether present suit is bad for including self-acquired property of Defendant No. 1? OPD*
4. *Whether present suit is non maintainable without seeking decree of declaration in view of para no. 3 of the written statement? OPD*



5. *Whether plaintiff is entitled to decree of partition as prayed for? OPP*
6. *Whether plaintiff is entitled to decree of possession as prayed for? OPP*
7. *Whether plaintiff is entitled to rendition of account as prayed for? OPP*
8. *Whether plaintiff is entitled to decree of permanent injunction? OPP Relief.”*

26. The Plaintiff asserted that from the transfer of the suit, the issues were framed *vide* order dated **12.12.2019**. However, the evidence could not be even after more than one and half years.

27. The *learned ADJ*, *vide* Order dated **21.08.2021**, observed that the Plaintiff must disclose the valuation for each of the reliefs separately, and further state the Court fees which is required to be paid. The Plaintiff, in the Suit for Partition, was supposed to disclose if she was in possession of any part of the suit properties sought to be partitioned; as a fixed Court fees as per Article 17(vi) of the Court-Fees Act, 1870 is then payable; and if she was not in possession, then she was required to pay *ad-valorem* Court fees, as per the value of her share in the properties sought to be partitioned.

28. The *learned ADJ*, *vide* Order dated **24.09.2021** observed that in case the requisite amendment in paragraph 11 of the Plaint was not carried out properly for all the reliefs, **the plaint of the Suit would be rejected under Order VII Rule 11 CPC.**

29. The Plaintiff filed ***Application under Order VI Rule 17 read with Section 151 CPC*** on **10.02.2023**, but the *learned ADJ* neither issue Notice, nor decided this Application on merits.

30. The *learned ADJ* passed the Order dated **16.02.2023**, **rejecting the Plaint under Order VII Rule 11(b) CPC.** It was observed that the logical



question for the consideration was whether the Plaintiff complied regarding valuation of a suit, for the purpose of jurisdiction and court-fees. It was held that the proposed amended plaint filed by the Plaintiff on **10.02.2023** also does not comply regarding valuation of a suit for the purpose of jurisdiction and court-fees.

31. The Plaintiff had again, not specified:

“a) what is the value of relief of rendition of accounts for the purpose of jurisdiction and court-fees, what court-fees is payable by the plaintiff qua the relief of rendition of accounts (re: Section 7(iv)(f) of the Court-fees Act, 1870) and what part of total court-fees viz. Rs.530/- paid by the plaintiff till date, is in respect of the said relief and

(b) what is the value of relief of partition, for the purpose of court-fees, what court-fees is payable by the plaintiff qua the relief of partition and what part of total court-fees viz. Rs.530/- paid by the plaintiff till date, is in respect of the said relief.”

32. It was further held that the plaintiff has created a dichotomy by taking inconsistent pleas regarding the court-fees payable by the plaintiff qua the relief of partition. At one stage, the plaintiff has pleaded that the court-fees payable by her, is fixed court-fees of Rs.20/- because she is in joint possession of the immovable properties, sought to be partitioned, by way of this suit. At another stage, the plaintiff has undertaken to pay the court-fees as per her 1/3rd share in all the suit properties, at the time of drawing up of decree in this suit.

33. The Order dated **16.02.2023** passed by learned *ADJ* was challenged before this Hon’ble Court *vide* **RFA No. 470/2023**, which was decided *vide*



Order dated **19.09.2023**. The impugned judgment dated **16.02.2023** was set aside and the Suit was remanded back to the learned Trial Court, for consideration of the Application under **Order VI Rule 17 CPC** filed by the Plaintiff.

34. The *Application under Order VI Rule 17 CPC read with Section 151 CPC filed on 10.02.2023 filed by the Plaintiff, was dismissed on 22.11.2023*, and it was observed that the Plaintiff is not in possession of any of the suit properties and that she cannot avoid payment of *ad-valorem* Court Fees under Section 7(iv)(b) of the Court-fees Act, and these observations had become final. The Plaintiff did not challenge the Order dated **22.11.2023**.

35. Thereafter, the matter was fixed for consideration of the Application under **Order VII Rule 11(b) CPC**. The Plaintiff filed *Application under Order VI Rule 17 read with Section 151 CPC, on 15.12.2023*. The learned **ADJ** dismissed the Application, *vide* Order dated **15.01.2024**.

36. The *Plaintiff filed a Civil Revision Petition bearing CRP No. 100/2024* challenging the Order dated **15.01.2024** *vide* which the second Application under **Order VI Rule 17 CPC**, was dismissed. However, the Revision Petition was dismissed by this Court, *vide* Order dated **01.04.2024**, by observing that instead of filing an Application to comply with the observations of the Court in regard to the reliefs being separately valued, the Plaintiff had tried to mould the amendment in a way that the Plaintiff may not have to pay the requisite Court Fees on the reliefs claimed by her, which was an abuse of the process of law.

37. Thereafter, learned District Judge, rejected the Plaint under **Order VII Rule 11(b) and (d) CPC**. In the impugned Order dated **18.05.2024**, by observing that the plaintiff must clearly state valuation for each of the reliefs



separately, and further state the amount of court-fees which is being paid by the Plaintiff. The Defendant No.1, along with his Written Statement in earlier **Suit No.150/2014**, had filed registered Wills, MOU, Gift Deed, Sale Deeds, etc. The Plaintiff thus had knowledge of the Gift Deed, Sale Deed, MOU, and Affidavit prior to the filing of the Partition Suit in 2014, which facts had been suppressed and concealed by her, in order to circumvent the provisions of **Order VII Rule 11 CPC**.

38. Further, the Court held that Defendant no. 1 had produced a copy of the Will by which the properties had been bequeathed to him, despite which the plaintiff had neither disclosed about the Will nor challenged it, and thus, the Suit for Partition, simplicitor was not maintainable. The period of limitation seeking declaration of validity of a Will qua the suit properties, was three years, which expired long before the filing of the Suit for Partition, in 2014. The Plaintiff failed to amend the Suit, in terms of directions given by the Court on **24.09.2021**.

39. Hence, the Suit was rejected for non-payment of Court fees as well as being barred by limitation.

40. Aggrieved by the impugned **Judgment dated 18.05.2024**, the **Plaintiff/Appellant has been preferred the present Regular First Appeal.**

41. The **first challenge** is that in paragraph 3 of the Plaint, it was clearly mentioned that the Plaintiff was in joint possession of the Suit Properties and therefore, the learned trial court wrongly concluded that the Plaintiff was not in possession, while deciding the Application under **Order VI Rule 17 read with Section 151 CPC**, vide order dated 22.11.2023, which got reaffirmed in the Judgment dated **18.05.2024**.



42. It was wrongly held that the plaintiff did not comply with Order dated **21.08.2021** and **24.09.2021**. The Trial Court wrongly held that the Plaintiff did not amended the Plaint within time, when the Applications under **Order VI Rule 17** were dismissed by the learned Trial Court, without considering the actual facts and circumstances of the case; thus, no question arises to give time to plaintiff for amending the plaint and to pay court fees.

43. The **second challenge** is that, since the Plaintiff had clearly mentioned in the Plaint that she was in join possession of the suit properties and had paid the requisite **fixed court fees**.

44. Furthermore, an issue was framed about whether the Suit was bad for proper Court fees, which without taking any evidence, has been decided against the Plaintiff under Order VII Rule 11 CPC.

45. The **third challenge** is that the learned Trial Court has observed that there was a violation of Section 11 of the Suits Valuation Act. However, the Suit has been erroneously rejected since the issue had been framed in regard to the Court fees, which could have been decided only by leading evidence. The learned trial court failed to consider that the present case is pending for adjudication, since 2014 and listed in Evidence. However, due to outbreak of Covid-19, evidence could not be completed. Despite ongoing recoding of the evidence, the trial court took *suo moto* action regarding the valuation and court fee and the Suit has been rejected. The Plaintiff asserted that it is absolutely against the principal of law and this issue in regard to Court Fees, should have been decided on merits of the case, along with all the issues framed.

46. The **fourth challenge** is that it has been wrongly held that the Suit of the Plaintiff, **was barred by limitation**. It was stated that since the parents



of the parents died intestate, so, the cause of action will continue, till the suit property is partitioned, as per law.

47. It is therefore, submitted that the impugned Order **dated 18.05.2024** be set aside.

48. The *Written synopsis was filed by the Plaintiff/Appellant*, reiterating the assertions made in the grounds of appeal.

49. The *Defendant No.1/Respondent No. 1, in the Written Submissions* had stated that the plaint valued the composite relief of Partition, Possession, and Rendition of accounts, at ₹1.5 crores and merely undertook to pay the Court fees, after the determination of the Suit. It did not value the relief separately or identify the Court fees payable on each relief.

50. The learned Trial Court had identified this defect in its Orders dated **21.08.2021** and **24.09.2021**, which is also evident from paragraph 11 of the Plaint itself. Despite an opportunity being given, there was no amendment made of paragraph 11 of the Plaint, and therefore the Suit has been rightly rejected, under **Order VII Rule 11 CPC**. In the second amended Application, it proposed an overall jurisdictional value of **₹5.94 crores and claimed to pay fixed Court fees on the footing of joint possession**, but simultaneously undertook to pay the court fees once the Appellant's share was determined.

51. The learned Trial Court had thus, dismissed the Application under **Order VI Rule 17 CPC**, which Order has been confirmed in CRP No. 100/2024, on **22.11.2023**. This Order remained unchallenged. The third attempt of amendment was also rejected on **15.01.2024**, in **CRP No. 100/2024**.



52. It is further submitted that a bare plea of joint possession, to avoid *ad-valorem* Court fees was evident from the reading of the Plaint itself, and therefore, it was held that she was not in possession of any of the Suit properties. These findings in the Order dated **22.11.2023** rejecting the amendment Application have remained unchallenged.

53. Insofar as the framing of issues was concerned, it was contended that the rejection of the Suit under **Order VII Rule 11(b) CPC**, is expressly contemplated in case the Suit is not valued properly, for the purpose of Court fees and jurisdiction.

54. It was therefore, submitted that there is no merit in the Appeal, which is liable to be dismissed.

Submissions heard and record perused.

55. The **short ground** on which the Suit has been rejected is on the failure to value each relief separately and to pay the *ad-valorem* Court fees. The question for adjudication before this Hon'ble Court is, whether the learned Trial Court was justified in rejecting the plaint under **Order VII Rule 11(b) and (d)** of the CPC, upon the failure of appellant to comply with repeated directions *vide* Order dated **21.08.2021** and **24.09.2021** concerning valuation and payment of requisite court fees and also as barred of limitation, as is apparent from the Plaint and admissions made, therein.

56. The paragraph 11 of the Plaint read as under:

“11. That the value of the suit for the purpose of jurisdiction is assessed by the Plaintiff at Rs. 1.5 Crores for the relief at Partition, Possession and Rendition of Accounts, however, the Plaintiff undertakes to pay the court fees after the determination of the same by



this Hon'ble Court. However, for the other relief of permanent injunction, the suit is valued at Rs. 130/- and accordingly the same is affixed hereto."

57. However, on the holistic reading of the Plaint, it was found evident that Plaintiff did not clearly disclose that plaintiff was in physical possession of any suit property, in respect of which possession was sought. Therefore, *ad-valorem* court fees were required to be paid.

58. In the ***Application under Order VI Rule 17 CPC*** dated **10.02.2023** proposed the amendment in the Plaint. The paragraph 11 of the proposed amended plaint filed by the Plaintiff on 10.02.2023 is reproduced below:

"11. That the value of the suit for the purpose of jurisdiction is assessed by the plaintiff at Rs. 5 Crores 94 Lacs (Rupees Five Crore and Ninety Four Lakhs) for the reliefs of partition, possession and rendition of accounts. The details of the immovable and moveable properties as under:

(A) (i) *The property bearing no.1675/2, Govind Puri Extension, Delhi measuring about 170 sq. yards having its approximately value Rs.88,00,000/- (Rupees Eighty Eight Lakhs Only);*

(ii) *The property No.1691/2 including four shops at Govind Puri Extension, Delhi measuring 200 sq. yards having its approximately value Rs.2.86 Crores (Rupees Two Crores Eighty Six Lakhs Only).*

(iii) *The Property bearing Flat No. B-3, Ganga Vatika, Laxman Jhula Road, Rishikesh, Uttarakhand, having its*



approximately value Rs.25,00,000/- (Rupees Twenty Five Lakhs Only).

However, the plaintiff is in joint possession in the above said immovable suit properties. So, the fixed court fees has been paid Rs.20/- as per the articles 17(vi) of the court fee Act, 1870.

(B) (i) The income from Business 'Gopal Ice Cream' having Rs. 60 Lakhs since the year 2010. The said amount may be low or high rendering true accounts by defendant No.1 and adjudicated by this Hon'ble Court.

(ii) The Gold ornament approximately value Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) and cash amount Rs.50,00,000/- (Rupees Fifty Lakhs Only) and rental income since the year 2010 Rs.60,00,000/- (Rupees Sixty Lakhs Only), the said amount may be low or high rendering true accounts by defendant No.1 and adjudicated by this Hon'ble Court. The total value of said moveable properties is Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs Only).

*(C) That **the plaintiff undertakes will pay the requisite court fees on her share i.e. 1/3rd or such share in the suit properties. as may be determined by this Hon'ble Court**, finally, before the decree is drawn.*

For, the other relief of permanent injunction suit is valued at Rs.130/- on which the prescribed court fees is prayed, with regard to court fees paid for the above



relief(s), if any deficiency found will be made good by plaintiff before the decree is drawn finally, as the plaintiff presently has no means to pay, who is housewife.”

59. The *learned ADJ* vide Order dated **16.02.2023**, held that the proposed amended plaint filed by the Plaintiff, also does not comply regarding valuation of the suit for the purpose of jurisdiction and court-fees.

60. The Plaintiff had filed ***Application under Order VI Rule 17 read with Section 151 CPC***, on **15.12.2023**. The *learned ADJ* dismissed the Application, vide Order dated **15.01.2024**.

61. The Order dated **15.01.2024** was confirmed in ***Civil Revision Petition*** bearing ***CRP No. 100/2024*** whereby the Application under ***Order VI Rule 17 CPC*** was dismissed, and thus attained finality.

62. It is evident from the Plaint itself that the Plaintiff was not in possession of any of the suit properties in respect of which she had claimed partition, and thus, *ad-valorem* Court fees was required to be paid. The Plaintiff made several attempts for amendment of the Plaint, but it had been evident that every time she avoided evaluating each relief separately. ***Even in the Amendment Application, she had stated that she would pay her part of the Court fees, after the decree is passed.*** Therefore, it is evident that despite several opportunities, the Plaintiff failed to value the suit correctly, in respect of each relief.

63. The power under ***Order VII Rule 11 CPC*** is undoubtedly, drastic in consequence and must be exercised with circumspection. The provision is intended to ensure that a Plaintiff cannot prosecute a suit on a valuation, which is not legally sustainable or avoid payment of court fees, which are otherwise payable on the reliefs claimed. However, where a plaintiff, despite



being specifically directed to correct the valuation of the suit and to pay the requisite court fee within the time granted by the Court, fails to do so the statutory consequence of rejection of the Suit, was inevitable, under Order VII Rule 11 CPC.

64. The Plaintiff failed to amend the plaint or pay the requisite Court Fees. Despite several opportunities, the Suit was rightly rejected for want of proper Court fees, under **Order VII Rule 11(b) CPC**.

65. The reliefs of **Possession, Rendition of Accounts and grant of Permanent Injunction** are dependent upon the Plaintiff establishing her entitlement to a share in the suit properties. Here, the suit properties are stated to have been bequeathed in favour of Defendant No.1 under Wills, and the plaintiff is admittedly aware of such Wills. A Suit for Partition cannot be maintained, while deliberately leaving the instrument which stands in the way of the claimed title, unchallenged. *The learned Trial Court was, therefore, justified in examining whether the suit, as framed, was legally maintainable on the date of its institution.*

66. Further, it is evident that Plaintiff had the knowledge of the Will and the documents affecting the suit properties since 2014 when the Defendant No.1 had filed the Suit against the Plaintiff. If the claim of the Plaintiff was that the Will or the subsequent documents were invalid, non-binding or otherwise incapable of affecting her rights, an appropriate Declaratory Relief was required to be raised, within the period prescribed by law. The Trial Court has recorded that the limitation for seeking such Declaration had expired long, prior to the institution of the present proceedings. On the facts recorded in the impugned order, there is no reason to take a different view.



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67. The Plaintiff has failed to demonstrate any error in the impugned Order dated **18.05.2024**, which would warrant any interference.

68. The learned District Judge has rightly rejected the Suit of the Plaintiff, under **Order VII Rule 11(b) and (d) CPC**. There is **no merit** in the present Appeal, ***which is hereby, dismissed.***

69. Pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 09, 2026

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