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

Date of decision: 27th FEBRUARY, 2025

IN THE MATTER OF:

+ **CS(OS) 361/2016**

MRS JYOTSNA BHATIA

.....Plaintiff

Through: Mr. Praveen Kumar, Advocate, Mr. Amolak Singh, Mr. Nishil Kaushal, Advocates

versus

MR ARUN KHOSLA & ORS

.....Defendants

Through: Mr. Rajiv Bahl, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 14141/2016

1. This application under Order VII Rule 11 of the CPC has been filed on behalf of the Defendants for rejection of the Plaint.
2. The present Suit is one for partition and separate possession of all the residential property comprised in House No. B-98, Greater Kailash-I, New Delhi-110048 (hereinafter referred to as 'the Suit Property') and agricultural land measuring about 118 Kanals 12 Marlas of agricultural land in Khasra Nos. 3/20, 3/21, 4/16, 4/24, 4/25, 14/4 14/5, 14/6 14/7, 14/14, 14/15 14/16 15/1, 15/10, 15/11, 15/20 as recorded in Jamabandi dated 29.09.1972 and about 76 Kanals 16 Marlas of agricultural land in Khasra Nos. 14/13, 14/17, 14/18, 14/23, 14/24, 25/1, 20/1, 21/3, 21/4, 21/5 as recorded in Jamabandi dated 24.05.1977 both parcels are in Village Haripura, Tehsil Narwana, District- Kaithal, (now Jind), Haryana.
3. It is the case of the Plaintiff that the father of the Plaintiff – Mr. Bhim



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Sen Khosla, who owned the above mentioned properties, passed away on 19.03.1986 leaving behind his wife – Ms. Laj Khosla, two sons - Mr. Randhir Khosla (Defendant No.2 herien) & Mr. Arun Khosla (Defendant No.1 herien), and one daughter - Mrs. Jyotsna Bhatia (the Plaintiff herein). It is the case of the Plaintiff that on the death of Mr. Bhim Sen Khosla the suit properties divulged on the legal heirs of Mr. Bhim Sen Khosla as Mr. Bhim Sen Khosla died intestate. It is stated that at the time of the demise of Mr. Bhim Sen Khosla, Defendant No.1 along with Defendant No.3 were staying on the first floor of the Suit Property and Defendant No.2 along with his wife, three daughters and mother were staying on the ground floor. It is stated that the mother of the Plaintiff passed away on 29.04.2000 and the Plaintiff participated in the last rites of her mother at the suit property and after the last rites, though the Defendants though acknowledged 1/3rd share of the Plaintiff in the Suit Property but since Defendant No.2 was under huge debts, partition of the Suit Property was not sought by the parties and the same was deferred. It is stated that the Plaintiff shifted to Delhi with her family in 2002. It is stated that since the Plaintiff did not have any permanent place over her head, the Plaintiff asked for demarcation of her share in the Suit Property from Defendants No.1 & 2. It is stated that Defendant No.1 sought some time for demarcation and partition of Plaintiff's share and Defendant No.2 represented to the Plaintiff that Defendant No.2 is facing acute financial distress and in order to bail out Defendant No.2, Defendant No.1 agreed to extend financial assistance to Defendant No.2 subject to Defendant No.2 surrendering his rights in favour of Defendant No.1. It is stated that Defendant No.1 represented to the Plaintiff that on account of his daughter's marriage he is not in a position to



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demarcate the share in the suit property and requested the Plaintiff to accommodate him for some more time and in lieu of this accommodation, the Defendant No.1 promised to the Plaintiff to construct the entire first floor from his own funds and hand it over to the Plaintiff for her occupation. It is stated that since Defendants No.1 & 2 are brothers, the Plaintiff relented. Defendants No.1 & 2 both agreed that till the Plaintiff is given her separate share in the Suit Property, the Plaintiff can continue to have access to one room on the ground floor. It is stated that in 2003, around the marriage of the daughter of the Defendant No.1, Defendant No.2 and his family vacated the first floor of the suit property. It is stated that after the marriage of her daughter, Defendant No.1 commenced construction of first floor of the suit property. It is stated that since the house in which the daughter of Defendant No.1 was married was being demolished for reconstruction, the Defendant No.1 requested the Plaintiff to allow his daughter to occupy the first floor of the house with her husband during the construction of their house. It is stated that initially, it was represented to the Plaintiff that they need to stay only for two years and thereafter, the Plaintiff can move in to the Suit property. It is stated that the Plaintiff agreed to the request of the Defendant No.1. It is stated that the daughter and son-in-law of the Defendant No.1 vacated the suit property at the end of 2014. It is stated that after the first floor was vacated, in February, 2015 the Plaintiff approached the Defendant No.1 expressing her desire to shift on the first floor of the suit property with her family to which Defendant No.1 said that he needs to remove his articles which are lying on the first floor. It is stated that disputes arose between the Plaintiff and the wife of the Defendant No.1, who told the Plaintiff that the entire property belongs to her husband and the



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Plaintiff has no share in the suit property. It is stated that on 03.06.2015 Plaintiff received information from the MCD and on scrutiny of the documents it was revealed that the entire property has been mutated in the name of the Defendant No.1 & 3 as owners. It is stated that it was also revealed that a Suit, being CS(OS) 804/1995 was filed by Late Smt. Laj Khosla wherein some compromise decree was passed. It is stated that the suit and compromise decree were not brought to the knowledge of the Plaintiff by the Defendants. It is stated that upon further inquiry it was brought to light that the father of the Plaintiff - Late Mr. Bhim Sen Khosla had left a registered Will dated 09.08.1984 bequeathing the entire suit property in equal share to Defendants No.1 & 2. It is stated in the plaint that her father had immense love and affection for her as she was the only daughter and there is no reason why she would be left out from inheritance. It is stated that it also came to the knowledge of the Plaintiff that the Suit, being CS (OS) No.804/1995, filed by the mother of the Plaintiff before this Court, was compromised on 25.03.1996 by abandoning the Will dated 09.08.1984 and the parties to that Suit became owners of the Suit property. It is stated that the said Suit was filed without impleading the Plaintiff as a party and once the Will dated 09.08.1984 was not propounded, the Plaintiff being class-I legal heir of Late Mr. Bhim Sen Khosla was to be impleaded as a party to the suit. It is stated that the Defendants No.1 & 2 along with the mother fraudulently obtained a decree dated 10.04.1996 behind the back of the Plaintiff. It is stated that it also came to light that the mother of the Plaintiff had also executed a Will dated 31.07.1991 in favour of Defendant No.1 bequeathing her share in the Suit property in favour of Defendant No.1. It is stated that the Will dated 31.07.1991 was executed at a time when



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the mother of the Plaintiff did not have any disposable share in the suit property and moreover, by her own conduct of entering into a compromise in CS(OS) No.804/1995 whereby the mother owns 25% share in the suit property and, therefore, the execution of the Will dated 31.07.1991 becomes doubtful. The Plaintiff has, therefore, filed the present Suit.

4. Summons were issued on 26.10.2016.

5. At this juncture, it is pertinent to mention that the Defendants moved an application, being IA No.392/2020, under Order I Rule 10(2) of the CPC for impleading Mr. Sudhir Khosla, the other son of Late Sh. Bhim Sen Khosla, as a party to the present Suit. In the said application it was contended that the Plaintiff cannot be accepted on account of non-rejoinder of necessary parties. The said application was disposed of vide Order dated 02.02.2021 as the whereabouts of Mr. Sudhir Khosla were not known. Thereafter, the Defendants filed an application, being IA No.14147/2016, praying for examination of the Plaintiff. In the said application, it was argued by the Defendants that the father of plaintiff and the defendants No.1 and 2 died in March, 1986, leaving a Will dated 09.08.1984 and under the said Will, the suit property was bequeathed equally to the Defendants No.1 & 2 in favour of the mother of the Plaintiff and Defendants No.1 & 2. It was argued that in 1995, the mother of the Plaintiff and the Defendants No.1 & 2 instituted a suit to contend that the purported life estate bequeathed in her favour was indeed an absolute vesting of the property in her and in 1996 a settlement was arrived at between the Defendants No.1 & 2 and their mother, who was the Plaintiff in that suit and the ground floor fell to the share of the Defendant No.2. It was contended that though the Plaintiff herein was not a party to the said Suit but she was well aware of what was



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happening and she did not raise any objections. It was further contended that the mother of the Plaintiff and the Defendants No.1 & 2 passed away in 2003 leaving behind a number of holographic Wills and in one such Will the Plaintiff and her husband are witnesses. It was further contended that in 2003, Defendant No.3 purchased the first floor of the suit property from the Defendant No.2 and the Plaintiff herein gave her affidavit along with the no-objection in support of the mutation. The said application was rejected by this Court *vide* Order dated 24.07.2019. Same contentions, as raised by the Defendants in I.A. No.392/2020 have been raised in I.A. 14141/2016.

6. Order VII Rule 11 of the CPC reads as under:

“11. Rejection of plaint.

The plaint shall be rejected in the following cases-

- (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:*

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.”

7. The law for rejection of a plaint under Order VII Rule 11 has now been crystallized by various judgments of the Apex Court. The Apex Court in Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510, has held as under:

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

14. In Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.



16. *The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)*

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

18. *In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*

19. *There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The*



intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

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

8. A perusal of the above judgment shows that 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 under Order VII Rule 11. 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.

9. A reading of the application under Order VII Rule 11 CPC does not bring out any case as to why the plaint should be rejected on any of the grounds which are mentioned in an application under Order VII Rule 11 CPC. The application is premised on the ground that the Plaintiff has made false averments and has concealed material facts. The Plaintiff was aware of



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her father having executed a Will dated 09.08.1984 and the mother having executed a Will dated 31.07.1991 and also the fact that her mother and two brothers having obtained a consent decree with regard to the partition of the suit property on 10.04.1996 and the fact that Defendant No.2 having sold his share of the property to Defendant No.3 *vide* Sale Deed dated 13.06.2003.

10. It is the case of the Defendants that the stand taken in the plaint are self contradictory. In the opinion of this Court, as stated earlier, the contentions raised in the application are purely factual in nature which will have to be demonstrated by leading evidence and in the court and not in an application under Order VII Rule 11 CPC. It is well settled that while deciding an application under Order VII Rule 11 CPC, there cannot be any compartmentalisation, dissection, segregation and inversions of the language of the various paragraphs of the plaint. Each of the assertions made in the application has to be demonstrated at the time of evidence.

11. Issues in the present suit have been framed. Since the questions raised in the present application has been decided in another application by this Court in I.A. No.392/2020, this Court is of the opinion that the contentions raised in I.A. 14141/2016 can be raised at the time of final arguments.

12. The application is dismissed.

SUBRAMONIUM PRASAD, J

FEBRUARY 27, 2025

Rahul