

06.05.2026

Present: Ld. Counsel for plaintiff with plaintiff.
Ld. Counsel for D-1 to D-4 through V.C.

IA No. 4/26 (U/O VII Rule 11 CPC)

1. This application was moved by defendants seeking rejection of plaint after arguments on the point as to whether any judgment on admission can be passed in the matter or not.
2. Counsel for defendants has relied upon a judgment dated 29.01.2026 passed by the Hon'ble High Court of Delhi in CS(OS) No. 141/22 titled as 'Neelam Bhatia & Ors. Vs. Ritu Bhatia & Ors' wherein the plaint of the plaintiff was rejected. It was argued by the Counsel for defendants that in the said suit *inter alia* partition was sought on the basis of GPA, agreement to sell etc. and the Hon'ble High Court of Delhi has held that since the said documents do not confer any right, title or interest in an immovable property, therefore, the Court held that there was non-disclosure of cause of action in favour of plaintiff of the said case.
3. Counsel for defendants argued that in this case also, plaintiff has sued D-1 to D-4 (who are stated to be successors in interest of plaintiff's brother late Mohd. Shaukeen) by relying upon unregistered GPA, agreement to sell etc. dated 22.09.1997. It was argued that the ratio of the aforesaid judgment is squarely applicable to the facts of the case and therefore, the plaint herein should be rejected.

4. On the other hand, Counsel for the plaintiff argued that in the aforesaid judgment relied upon by the defendants, there was no issue with respect to the admissions made by the defendants. It was argued that the said judgment would only apply if there was no clear and categorical admission on the part of defendants that plaintiff and late Mohd. Shaukeen (under whom D-1 to D-4 claim) hold papers in their joint name. It was argued that since in this case there is a categorical admission of the defendants on the above count and since the said issue has already been argued before this Court, now, only on the basis of the above judgment, plaintiff cannot be non-suited.
5. I have given thoughtful consideration to the above arguments and have perused the record.
6. It is pertinent to note that on 14.01.2026 a joint written statement was filed on behalf of all the defendants and rejoinder thereto was also filed.
7. The Court after considering the pleadings (though wrongly recorded as the plaint in order dated 14.01.2026) had observed that possibly on the basis of pleadings, the suit can be decided U/O XII Rule 6 read with Order 15 Rule 1 CPC.
8. Thereafter, parties were called upon to address arguments on the aforesaid aspect and eventually, on 11.04.2026, submissions on the aforesaid point were heard.
9. On the same day, the present application was moved seeking rejection of the plaint. Even though, while deciding an application U/O VII Rule 11 CPC, only the plaint and the documents filed therewith are to be read, still, this Court has

laboured to record the above said facts to highlight the backdrop in which the application was moved.

10. Now, if I peruse the plaint, plaintiff alleges that he and his brother late Mohd. Shaukeen jointly purchased the suit property on the basis of GPA, agreement to sell on 22.09.1997. Thereafter, it is claimed that they came in possession and various construction were raised on the property by plaintiff. Plaintiff further claims that eventually, **one room at first floor** was allowed to be used by late Mohd. Shaukeen. It is claimed that the said one room has now been locked by the defendants and despite requests for unlocking it or for partition, have not been acceded to.

11. Thus, from the above, it is clear that the suit property herein is stated to be a constructed property and is claimed to be in physical possession of the plaintiff (except for one room at the first floor). In contrast, in the judgment relied upon by the defendants i.e. Neelam Bhatia (supra) the property involved was a **vacant piece of land stated to have been in joint and constructive possession of the parties to the said litigation.**

12. Again, it appears that apart from the agreement to sell, there was a registered sale deed in favour of predecessor in interest of the defendants namely Amrish Kumar Bhatia which was subsequent in point of time than the agreement to sell, GPA etc being relied upon by the plaintiffs in the said suit. The Hon'ble High Court of Delhi duly noted the above registered title document in favour of the predecessor in interest of the defendants in the said suit in para 18 and also took note of the

fact that plaintiffs successor in interest never challenged the said document during his lifetime.

13. It was in the backdrop of the above peculiar facts of the said case that the plaint in Neelam Bhatia (supra) came to be rejected.

14. In my humble opinion, the facts of the said case are distinct and separate from the facts herein. The case herein is that plaintiff and late Mohd. Shaukeen are claimed to have jointly purchased the property and are stated to have had physical possession of a constructed property since long. There is a *prima facie* admission qua the above facts in the written statement filed by the defendants. Even if I overlook the written statement (as this is an application U/O VII Rule 11 CPC) for the purposes of this application and treat that plaintiff does not hold any document of title, still in law, he can seek partition of a property which is in his settled possession since long.

15. Thus, in my humble opinion, the ratio of Neelam Bhatia (supra) is not applicable to the facts of the present case and is clearly distinguishable. On the bare perusal of the plaint with documents, it cannot be said that the plaint herein is liable to be rejected. Application is misconceived. It is dismissed.

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16. Before any order is passed on the question of any admission made by the answering defendants, it is noticed that the parties herein are Muslim by religion. Now, it appears that late Mohd. Shaukeen left behind D-1 to D-4 as his wife and children. But, under Muslim law even father, mother etc. are treated as

successors in interest to the property of the deceased. They are not parties to this suit.

17. Thus, a question arises as to whether all the successors in interest of late Mohd. Shaukeen are parties to this suit or not.

18. Let parties clarify in this regard. Let parties also clarify whether they are Sunni or Shia Muslims?

19. If late Mohd. Shaukeen has left behind other legal heirs, as per Muslim law, they may be necessary parties to the present suit.

20. List for clarifications on the above points on 03.06.2026.

Aashish Gupta
DJ-01/NE/KKD/DELHI
06.05.2026