

CS 430/24

KRISHAN KUMAR VS. VINAY KUMAR ARORA

11.09.2025

Present : Sh. Yoginder Singh, Ld. Counsel for plaintiff.
Sh. Sachin Dhingra, Ld. Counsel for defendant no.1
& 2.
Sh. Kamal Behal, Ld. Counsel for defendant no.3 to
6 through VC.

Fresh vakalatnama has been filed on behalf of defendant no.1 and 2. Same be taken on record.

Arguments advanced on application under Order 7 Rule 11 r/w Section 151 CPC filed on behalf of defendant no. 1 and 2, seeking rejection of the plaint on behalf of the plaintiffs.

The instant application has been filed primarily on two counts. The plaintiffs are not in possession of the suit property, however the instant suit for partition has been filed without seeking the relief of possession and no court fees has been paid for the relief of possession; Secondly, the property is owned by defendant no.1 and 2 by virtue of documents i.e. Gift Deed and Will in favour of defendant no.1 and the transfer documents executed by defendant no.1 in favour of defendant no.2, however in the plaint no relief in respect of the said documents has been prayed.

It is the settled law that for disposal of the application under Order 7 Rule 11 CPC only the plaint is required to be looked into. The plaintiffs in para 11 of their plaint have

pleaded that they are in possession of the suit property and have spent the substantial amount for repairing and upkeep of the suit property and they are the co-owners of the suit property as the property in question is the property of deceased father of the plaintiffs and defendants. Similarly, in para 17 of the plaint the plaintiffs have taken the plea that the plaintiffs being co-owners, co-sharers and in joint possession of the suit property and being the owners of the property, they are having every legal right, title and interest to enjoy and use the suit property and to exercise all rights of ownership and possession in respect of the suit property.

Furthermore, there is no averment in respect of the execution of any documents in favour of defendant no.1, as claimed by defendant no.1 and 2 in the application. Hence, the pleas taken by the defendants can be decided only by way of evidence and the plaint cannot be rejected merely on the basis of the pleas taken in the application. Accordingly, the application is dismissed.

Application under Order 7 Rule 11 r/w Section 151 CPC filed on behalf of defendant no. 1 and 2, is disposed of accordingly.

Another application under Order 8 Rule 1 CPC filed on behalf of defendant no.1 and 2 for seeking condonation of delay of 62 days in filing the written statement, is listed for hearing.

Heard.

During course of the arguments, Ld. Counsel for plaintiffs has consented for allowing the application subject to heavy cost as the period of delay is not 62 days but about six

months from the date of service of the summon.

In view of the consent given by counsel for the plaintiffs and in the ends of justice, the application is allowed subject to cost of Rs.10,000/- to be paid to the plaintiffs. Joint written statement on behalf of the defendant no.1 and 2 be taken on record.

Application under Order 8 Rule 1 CPC filed on behalf of defendant no.1 and 2 is disposed of accordingly.

Ld. Counsel for plaintiffs submits that though the matter could not be settled in Mediation Centre, however since the parties to the suit are brothers and sisters, the plaintiffs still wish to explore the possibility of amicable settlement with the intervention of the counsels for the parties. Ld. Counsels for defendants have no objection to the same.

Put up for reporting settlement/payment of cost/ further proceedings on **07.11.2025**.

(SUKHVINDER KAUR)
Principal District & Sessions Judge
North-East District, KKD Delhi/11.09.2025