

JAI PRAKASH MATHUR Vs. SURAT YADAV ANR.

04/06/2026

Present : Sh. Vinay Rathi & Sh. Manjeet Singh, Ld. Counsels
for plaintiff.

Sh. Sanjay Padam Jain, Ld. Counsel for LR's of
defendant no. 2 with Mrs. Jyoti, LR.

1. PW1 – Ms. Jyoti has been partly cross-examined. Further cross-examination has been deferred at request of Ld. Counsel for plaintiff as he is busy in some other Court.

2. An application under Order 16 Rule 1 CPC has been filed on behalf of LR's of defendant no. 2. Copy supplied. Reply, if any, be filed with copy in advance to Counsel opposite a week before the next date of hearing.

3. Reply has been filed to application under Order 7 Rule 11 CPC on behalf of plaintiff. Copy supplied.

4. Ld. Counsel for LR's of defendant no. 2 presses his application dated NIL, supported by affidavit dated 05/02/2026 under Order 7 Rule 11 CPC.

BRIEF FACTUAL MATRIX AS PROJECTED IN THE PLAINT

5. The suit property is consisting of 5 rooms and one hall built-up bearing Plot No. 2631, out of Khasra No. 81/22 (60X30) total admeasuring 220 Sq. Yards situated in the area of Trithankar Nagar, Jain Nagar Colony, Village – Karala, Delhi – 110081 (hereinafter referred to as suit property).

6. Parties are referred in the present order as per original status in the original memo of parties.

7. It is case of the plaintiff that Agreement dated 27/07/2009 qua the suit property was entered into with defendant no. 2. Total sale consideration was Rs. 17 Lacs. Target date for execution of Sale Deed was 20/10/2009.

8. Defendant no. 2, as per the plaintiff, executed GPA, Affidavit, Agreement to Sell, Will dated 29/09/2009 in favour of plaintiff. It is case of the plaintiff that plaintiff had taken physical possession.

9. As per case of the plaintiff, on 06/10/2009, defendant no. 1, alongwith Police personnel dispossessed the plaintiff.

10. For ease of reference, prayer in the suit is reproduced below :-

“PRAYER

A) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring that the plaintiff is bonafide purchaser / owner of the suit property i.e. residential plot consisting of 5 rooms and one hall built-up bearing Plot No. 2631, out of Khasra No. 81/22 (60X30) total admeasuring 220 Sq. Yards situated in the area of Trithankar Nagar, Jain Nagar Colony, Village – Karala, Delhi – 110081.

B) Pass a decree of recovery of possession in favour of the plaintiff against the defendants thereby delivering the possession of the suit property i.e. residential plot consisting of 5 rooms and

one hall built-up bearing Plot No. 2631, out of Khasra No. 81/22 (60X30) total admeasuring 220 Sq. Yards situated in the area of Trithankar Nagar, Jain Nagar Colony, Village – Karala, Delhi – 110081 to the plaintiff in accordance with law.

C) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their agents, representatives, LR's etc. from creating any third party interest in the suit property and parting with possession i.e. residential plot consisting of 5 rooms and one hall built-up bearing Plot No. 2631, out of Khasra No. 81/22 (60X30) total admeasuring 220 Sq. Yards situated in the area of Trithankar Nagar, Jain Nagar Colony, Village – Karala, Delhi – 110081.

D) Award cost of the proceedings in favour of the plaintiff and against the defendants.

E) Pass any such other orders / relief's as this Hon'ble Court deems fit and proper in the interest of justice in favour of the plaintiff and against the defendants.”

FIRST ARGUMENT

11. Ld. Counsel for LR's of defendant no. 2 argues that the LR's of defendant no. 1 were not brought on record and thus, the present application for rejection of plaint be allowed.

12. Per contra, Ld. Counsel for plaintiff argues that notice on application under Order 22 Rule 4 CPC to bring on record LR of defendant no. 1 was issued on 01/05/2015. Vide order dated 19/01/2016, Ld. Counsel for LR of the defendant was directed to disclose particulars of other LR of defendant no. 1 to plaintiff. Vide order dated 06/08/2018, application under Order 22 Rule 4 CPC to bring on record LR of defendant no. 1 – Sh. Surat Yadav was allowed.

SECOND ARGUMENT

13. Ld. Counsel for the LR of defendant no. 2 argues that plaint does not disclose any cause of action so the plaint be rejected.

14. Per contra, Ld. Counsel for plaintiff argues that only averments in the plaint are to be seen at this stage. Averments in the plaint are to be taken as correct, at this stage. Plaintiff has relied upon Agreement to Sell and his previous possession. At this stage, the plaint cannot be rejected on the ground that no cause of action is disclosed.

THIRD ARGUMENT

15. Ld. Counsel for the LR of defendant no. 2 argues that defendant no. 2 had expired on 21/01/2021. Order 22 CPC has not been complied with and so the plaint be rejected.

16. Per contra, Ld. Counsel for plaintiff argues that his application under Order 1 Rule 10 CPC, dated 05/08/2023 for

deletion of name of defendant no. 2 is pending. Defendant no. 2 is stated to be unmarried and therefore, his deletion is prayed for.

17. Heard. File perused

SCOPE OF INTERVENTION BY COURT :

18. Instead of referring to all the judicial precedent laid down by the Hon'ble Apex Court in this regard, it would be apposite to refer to the case of ***Saleem Bhai Vs. State of Maharashtra, reported in (2003) 1 SCC 557, the Hon'ble Supreme Court***, while discussing the factors to be considered by the Courts in exercise of power under Order VII Rule 11 CPC, has held that :-

“... [Order VII Rule 11 C.P.C.](#) 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 by the plaintiff, but the plaint is written 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, failed to do so;*
- (d) Where the suit appears from the statement in the plaint to be barred by any law;*
- (e) Where it is not filed in duplicate;*
- (f) Where the plaintiff fails to comply with the provisions of rule 9;*

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 for 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 great injustice to the plaintiff.

A perusal of [Order VII Rule 11 C.P.C.](#) makes it clear 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 under [Order VII Rule 11 C.P.C.](#) 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 Rule 11 of [Order VII C.P.C.](#) the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under [Order VII Rule 11 C.P.C.](#) cannot be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The Hon'ble High Court, however, did not advert to these aspects. We are, therefore, of the view that for the afore-mentioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial court for deciding the application under [Order VII Rule 11 C.P.C.](#) on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law."

FINDINGS ON FIRST ARGUMENT

19. Submissions on behalf of LR's of defendant no. 2 that the LR's of defendant no. 1 were not brought on record and thus, the present application for rejection of plaint be allowed are without merits. These submissions are rejected as :

20. Perusal of record shows that notice on application under Order 22 Rule 4 CPC to bring on record LR's of defendant no. 1 was issued on 01/05/2015. Vide order dated 19/01/2016, Ld.

Counsel for LR's of the defendant was directed to disclose particulars of other LR's of defendant no. 1 to plaintiff. Vide order dated 06/08/2018, application under Order 22 Rule 4 CPC to bring on record LR's of defendant no. 1 – Sh. Surat Yadav was allowed.

FINDINGS ON SECOND ARGUMENT

21. Submissions on behalf of LR's of defendant no. 2 that plaintiff does not disclose any cause of action so the plaintiff be rejected are without merits. These submissions are rejected as :

22. Only averments in the plaintiff are to be seen at this stage. Averments in the plaintiff are to be taken as correct, at this stage. Plaintiff has relied upon Agreement to Sell and his previous possession. At this stage, the plaintiff cannot be rejected on the ground that no cause of action is disclosed.

FINDINGS ON THIRD ARGUMENT

23. Submissions on behalf of LR's of defendant no. 2 that defendant no. 2 had expired on 21/01/2021. Order 22 CPC has not been complied with and so the plaintiff be rejected are without merits. These submissions are rejected as :

24. Application under Order 1 Rule 10 CPC, dated 05/08/2023 for deletion of name of defendant no. 2 is pending. Defendant no. 2 is stated to be unmarried and therefore, his deletion is prayed for.

25. At this stage, plaintiff cannot be rejected on the grounds pressed for. Nothing states in the present order shall effect the merits of the case.

26. Accordingly, application dated NIL, supported by affidavit dated 05/02/2026 under Order 7 Rule 11 CPC is dismissed.

27. At request of the Ld. Counsel for the plaintiff, to come up for disposal of application under Order 1 Rule 10 for deletion of name of defendant no. 2, application under Stamp Act filed on behalf of LR's of defendant no. 2 and application under Order 16 filed on behalf of LR's of defendant no. 2 on 24/09/2026.

(VIKRAM BALI)
DISTRICT JUDGE-02/NORTH/ROHINI
DELHI/04/06/2026