

IN THE COURT OF SH AKBAR SIDDIQUE,
DISTRICT JUDGE 04, NORTH DISTRICT
ROHINI COURTS : DELHI

CS DJ 401/24

Darshan Chaudhary

.....Plaintiff

Vs

Rajbir Singh

....Defendant

ORDER/04.08.2026

1. Vide the present common order I shall dispose of the applications u/o VII Rule 11 CPC, 1908, filed by defendant no. 1, 2, 3, 4 and 5.
2. The present applications are filed by the defendants on the ground that the present suit is not maintainable as it is based on false and frivolous averments in the plaint. Further, material facts have been concealed by the plaintiff from this court which disentitles the plaintiff from getting any relief from this court.
3. Pertinently, the plaintiff has not adhered to the mandate of Order VI Rule 4 CPC, with respect to the specific particulars in the pleadings which are necessary for the fair and proper disposal of the present suit.
4. It is the case of the applicant that the present suit is devoid of any merits as it is barred by limitation and plaintiffs have failed to explain their rights as well as cause of action in the suit property. Further the plaintiffs are not the owners as well as in possession of the suit property. Thus, the present suit for partition and permanent injunction is not maintainable without seeking right for declaration and possession in the suit property.

5. The applicant have further relies on the judgment The Hon'ble Supreme Court in *Anathula Sudhakar Vs. P Buchi Reddy (Dead) by LRs & Ors.*
6. Thus the present suit filed by the plaintiff is not maintainable.
7. Conversely, the present application is opposed by the plaintiff on the ground that the present applications are filed just to harass and pressurize the plaintiffs. There is no merits in the present applications and it is liable to be rejected.
8. It is the case of the applicant that present suit is neither time barred nor it is devoid of any cause of action rather there is ample cause of action against all the defendants and it is a matter of trial through which the plaintiff will be able to establish their case in an effective manner.
9. Accordingly, the present applications are liable to be dismissed.

ANALYSIS & CONCLUSION

10. I have heard the Ld. Counsel for the parties and considered the rival contentions and carefully perused the documents on record.
11. It is a settled law that at the time of deciding the application U/o VII Rule 11 CPC, it is paramount to consider the averment in the plaint only and nothing else can be considered at the time of deciding the said application. Further, more light can be shed on this point by considering the of Hon'ble Supreme Court in the case *Mohd. Saleem Bhai Vs. State of Maharashtra (2003) 1 SCC 557*, which mandates that at the time of deciding the application U/o 7 Rule 11 CPC only the pleadings/averment in the plaint is to be considered. The Hon'ble Supreme Court has held as follows:

“9. A perusal of Order 7 Rule 11 CPC 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 7 Rule 11 CPC 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 7 CPC, 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 7 Rule 11 CPC cannot but 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 High Court, however, did not advert to these aspects’.

12. Therefore, the mandate of Mohd. Saleem Bhai (Supra) shall be taken into consideration in deciding the present application.
13. Further, the law applicable for deciding an application filed under Order VII Rule 11 of CPC was outlined by Hon’ble Supreme Court in the decision in *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives (2020) 7 SCC 366* and the same read as follows:

“23.1 ...

23.2. The remedy under Order VII 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 in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not

be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)

“12. ...The whole purpose of conferment of such power 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, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. 23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint 10, read in conjunction with the documents relied upon, or whether the suit is barred by any law. 23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under: “14.Production of document on which plaintiff sues or relies.– (1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. (2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. (3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. (4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.” (emphasis supplied) 23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith

the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint. 23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. 23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

14. I have meticulously examined the averments in the plaint wherein it is categorically averred by plaintiff that the suit properties were owned by the Late Sh. Ram Mehar who was the father of the husband of the plaintiff and defendant no.1. Thereafter the agricultural properties were relinquished by the daughters of Sh. Ram Mehar vide registered Relinquishment Deed dt. 28.05.2014 in favor of husband of plaintiff and Defendant no.1. Further, the suit properties which are subject matter of the present were not part of the Relinquishment Deed dt. 28.05.2014 but there was an oral family settlement wherein it was decided that the present suit properties will be claimed later on and the LRs of Sh. Ram Mehar will continue to enjoy the said suit properties.
15. Present suit is filed by the plaintiffs seeking partition of the suit properties and the following prayers are made:
 - a. Pass an order of preliminary decree of partition be passed in favour of plaintiffs and against the defendants in respect of suit properties i.e. (1) 154 sq. yds. now, known as H.No.66, Village Auchandi, Delhi-39 and presently constructed upto First Floor. (2) Plot measuring 250 sq. yds. bounded as WEST: Gali, EAST: Property of other co-sharer, North: Gali South: Other's property and fall in Khasra no. 108/2 and presently constructed two rooms

and Baranda. (3) Plot measuring 110 sq. yds. fall under the plot no. 110/106 (, therefore their half share 1/2nd.

b. Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining the defendants, their legal heirs, from creating any third party right, title and interest and further be restrained from dealing in any manner, transferring or and parting with the possession of any portion of the suit properties, which is specifically shown in the site plan attached herewith.

c. Pass the Final decree in the favour of the plaintiffs and against the defendants in respect of suit properties i.e. (1) 154 sq. yds. now, known as H.No.66, Village Auchandi, Delhi-39 presently constructed upto First Floor. (2) Plot measuring 250 sq. yds., bounded as WEST: Gali, EAST: Property of other co-sharer, North: Gali South: Other's property and fall in Khasra no. 108/2 and presently constructed two rooms and Baranda. (3) Plot measuring 110 sq. yds. fall under the plot no. 110/106 (therefore their half share 1/2 nd

d. The cost of the suit may also be awarded to the plaintiffs.

e. Any other relief or remedy which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiffs and against the defendants.

16. The present applications are filed by the applicants on the basis that the present suit is barred by limitation. I am of the humble opinion that the point from which the counting of limitation period shall commence is dependant upon various factors as in the present case there is specific averment relating to the oral family settlement. Further, the issue of limiation is a mixed question of law and fact and power u/o VII Rule 11 CPC cannot be exercised to reject the plaint on the basis of suit being barred by limitation.

17. The Hon'ble Supreme Court in the case of In P. Kumarakurubaran v. P. Narayanan & Ors 2025 SCC Online SC 975

The Supreme court reiterated the settled legal position that the question of limitation, when it involves disputed facts, cannot be adjudicated at the stage of an application under Order VII Rule 11 of the CPC. The Court held that if the issue of limitation is a mixed question of law and fact, it necessarily requires examination as to when the cause of action arose, which could only be determined after the parties have been given an opportunity to lead evidence. Consequently, such matters cannot be decided summarily by merely relying on the averments in the plaint or the contentions in the application seeking rejection.

18. In the present case the plaintiffs have asserted continued rights over jointly held properties of Late Sh. Ram Mehar. These averments on the face of it does not justify a finding that the suit is exfacie time barred.
19. Additionally, defendants have also contended that the suit is not maintainable because plaintiffs have not claimed the relief of possession as well as declaration with respect to their shares in the suit property. I am of the humble opinion that in a suit for partition, which inherently includes a claim for possession. The suit of the plaintiffs is founded on the joint-ness of the suit properties and implicit therein is the element of joint-ness of possession, constructively or other ways. The plaintiffs have also prayed for oral family settlement right after the relinquishment of shares by the sisters in favor of the husband of plaintiff and defendant no.1.

20. Thus, in the absence of clear evidence of ouster of the plaintiffs from possession, the plaint cannot be rejected and it has to be decided at an appropriate stage.

21. Pertinently, The Hon'ble Supreme Court in the case of **M/s Frost International Limited v. M/s Milan Developers and Builders (P) Limited &Anr 2022 INSC 380**

The relevant portion of the said decision reads as under: "The proviso to Section 34 states that no court can make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The said question will have to be considered at the time of final adjudication of the suit as the question of granting further relief or consequential relief would arise only if the court grants a declaration. If the plaintiff is unsuccessful in seeking the main relief of declaration, then, the question of granting any further relief would not arise at all. Therefore, omission on the part of the plaintiff in praying for further consequential relief, would become relevant only at the time of final adjudication of the suit. Hence, in view of the above, the plaint cannot be rejected at this stage by holding that the plaintiff has only sought declaratory reliefs and no further consequential reliefs."

22. Furthermore, I am of the humble opinion that suit should not be dismissed merely on account of curable defect, such as the omission to make a specific prayer for possession without affording an adequate opportunity to amend the plaint will not be in the interest of justice.

23. Applicants have also prayed that the plaintiffs does not have any right, title or interest in the suit property and no document

showing the ownership of the suit property have been filed by plaintiff. In this regard, Ld. Counsel for the applicant have placed reliance on the judgment of Hon'ble High Court of Delhi in *Neelam Bhatia Vs. Ritu Bhatia, DHC*, wherein the plaint was rejected by Hon'ble High Court of Delhi. I am of the view that it has been categorically mentioned by plaintiff that the suit properties were owned by the late father of the husband of plaintiff and defendant no.1 and there was an execution of oral family settlement between the parties. Thus, the contentions of the plaintiff in the suit cannot be discarded by extraordinary power u/o VII Rule 11 CPC. Moreover, the plaint, when read holistically discloses the cause of action, the plaintiffs claims that the suit properties are joint family properties. Thus, the partition of the said suit properties are being sought by the plaintiff.

24. Thus, I am of the view that there is cause of action in the plaint against the defendants which can only be decided after going through the rigors of the trial.
25. Consequently, in view of the aforesaid discussions and deliberation, accordingly, the applications under Order VII Rule 11, r/w Section 151 Code of Civil Procedure filed by defendants /applicant are hereby dismissed.
26. Put up for further proceedings on **17.11.2026**

Announced in open court
on 04.08.2026

(Akbar Siddique)
DJ-04, North, Rohini Courts,
Delhi/04.08.2026