

9 Civ DJ 33/21
IA No. 3/26
SUMAN SANGWAN Vs. SANTOSH

04.07.2026

Present Shri Rajbir Bansal, Ld. Counsel for plaintiff.

Shri Manish Tanwar, Ld. Counsel for defendant.

Arguments on the application under Order VII Rule 11 r/w
Section 151 CPC heard.

**Application under Order VII Rule 11 read with Section 151 CPC
filed on behalf of defendant no. 2**

By way of the present application, defendant no. 2 seeks rejection of the plaint under Order VII Rule 11 CPC. It is contended that the plaint no longer discloses any cause of action in view of the judgment dated 09.02.2026 passed by the Hon'ble Delhi High Court in RFA No. 458/2023, whereby the appeal preferred by the present plaintiff against the decree for possession was dismissed. It is further submitted that possession of the suit property has already been recovered through execution proceedings on 13.05.2026, rendering the prayer for permanent injunction infructuous. It is also contended that the Hon'ble High Court has categorically held that defendant no. 1 was never the owner of the suit property and, therefore, had no authority to enter into any agreement to sell the same. Consequently, according to the applicant, the plaint discloses no enforceable cause of action for specific performance. It is lastly argued that the alternative claim for recovery of money is also barred by limitation.

The plaintiff has opposed the application contending that the plaint discloses a complete cause of action, that the question whether defendant no. 1 possessed title or authority to execute the agreement is a matter requiring trial, and that the plea of limitation is a mixed question of law and fact. It is further submitted that the amendment incorporating the alternative relief of recovery was allowed by the Court and the maintainability of the suit cannot be defeated at the threshold.

Court observations and findings

It is well settled that while considering an application under Order VII Rule 11 CPC, the Court has to confine itself exclusively to the averments contained in the plaint together with the documents relied upon by the plaintiff. The pleas taken in the written statement or the defence of the defendant are wholly irrelevant at this stage. The plaint has to be read as a whole in a meaningful manner and not in a truncated or compartmentalised fashion. If the plaint discloses a cause of action and raises triable issues, rejection of the plaint is impermissible.

The Hon'ble Supreme Court in ***Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) (Dead) through Legal Representatives, (2020) 7 SCC 366***, reiterated that while exercising jurisdiction under Order VII Rule 11 CPC, the Court cannot undertake adjudication on disputed questions of fact or evaluate the correctness of the plaintiff's case. Likewise, in ***Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661***, it was held that the defence of the defendant cannot be looked into while deciding an application under Order VII Rule 11 CPC.

Equally settled is the principle that rejection of a plaint can be

ordered on the ground of limitation under Order VII Rule 11(d) CPC only where the suit appears to be barred by limitation from the statements contained in the plaint itself. If determination of limitation requires investigation into disputed facts, the plaint cannot be rejected at the threshold. Reference may be made to ***Popat and Kotecha Property v. State Bank of India Staff Association***, (2005) 7 SCC 510, ***Balasaria Construction (P) Ltd. v. Hanuman Seva Trust***, (2006) 5 SCC 658, and ***Srihari Hanumandas Totala v. Hemant Vithal Kamat***, (2021) 9 SCC 99.

Whether the plaint discloses a cause of action

Perusal of the amended plaint shows that the plaintiff has pleaded that defendant no. 1 agreed to sell the third floor of the suit property for a total sale consideration of Rs. 18,00,000/- that various payments aggregating to Rs. 9,90,000/- were made towards the transaction. The possession was delivered to her. The defendants failed to execute the sale deed despite repeated demands and legal notices. She has always remained ready and willing to perform her part of the contract. On these averments, the plaintiff seeks specific performance and, alternatively, recovery of the money allegedly paid.

Whether these assertions are true or false, whether the alleged agreement was actually executed, whether the payments were made towards a sale transaction or towards a loan arrangement, whether possession was delivered pursuant to an agreement to sell, and whether defendant no. 1 possessed authority to contract with the plaintiff are all matters which can only be determined after appreciation of oral and documentary evidence.

The contention of defendant no. 2 that the judgment of the Hon'ble High Court has conclusively established that defendant no. 1 had no title over the property undoubtedly constitutes a substantial defence available to the defendants. However, such defence cannot by itself furnish a ground for rejection of the plaint under Order VII Rule 11 CPC.

The application requires the Court to examine the effect of the findings recorded in the earlier litigation and to determine whether those findings operate as res judicata or otherwise defeat the plaintiff's claim. Such questions involve examination of the pleadings, issues framed, evidence led, and the scope of the previous adjudication. These are not matters which can ordinarily be decided merely by reading the plaint.

It is settled that the plea of res judicata or binding effect of an earlier judgment generally requires consideration of materials beyond the plaint and, therefore, ordinarily falls outside the limited scope of Order VII Rule 11 CPC. The Supreme Court has consistently held that such issues are required to be adjudicated during trial unless the bar is apparent from the plaint itself.

Merely because defendant no. 2 relies upon findings rendered in another proceeding does not mean that the plaint ceases to disclose a cause of action. The correctness or legal effect of those findings vis-à-vis the present suit is a matter to be examined at the appropriate stage.

Effect of decree under Order XII Rule 6 CPC and delivery of possession.

The applicant has contended that the relief of permanent injunction has become infructuous since the defendants have already recovered

possession of the suit property in execution of the decree for possession passed in the earlier suit under Order XII Rule 6 CPC. It is stated that the decree was affirmed by the Hon'ble Delhi High Court in RFA No. 458/2023 and possession was delivered to the defendants on 13.05.2026 through execution proceedings.

There is no dispute that if, during the pendency of the present suit, the plaintiff has admittedly lost possession pursuant to execution of a decree passed by a competent Court, the relief seeking to restrain the defendants from dispossessing the plaintiff may ultimately survive only for consideration of its maintainability or may have become infructuous. However, such subsequent development does not render the plaint liable to rejection under Order VII Rule 11 CPC.

Order VII Rule 11 CPC contemplates rejection of the plaint as a whole and not rejection of one or more reliefs contained therein. The principal relief in the present suit is one of specific performance of the alleged agreement to sell, with an alternative prayer for recovery of the amount allegedly paid by the plaintiff. The alleged subsequent loss of possession in execution proceedings does not, by itself, extinguish the cause of action pleaded in respect of those substantive reliefs. At best, it may affect the maintainability or grant of the consequential relief of permanent injunction, which is a matter to be considered while finally adjudicating the suit.

It is settled that subsequent events may be taken into consideration for moulding the relief to be ultimately granted. However, such subsequent events cannot ordinarily furnish a ground for rejection of the

plaint under Order VII Rule 11 CPC when the plaint otherwise discloses a cause of action on the date of its institution.

Plea of limitation

The applicant has lastly contended that even the alternative relief of recovery of Rs. 9,90,000/- is barred by limitation. The alternative relief of recovery was introduced by amendment, which amendment came to be allowed by the Court vide order dated 19.09.2024. Whether the amended claim relates back to the date of institution of the suit, whether the amendment introducing the alternative relief takes effect from the date of the plaint or from the date of amendment, whether the defendants are entitled to raise the plea of limitation notwithstanding the amendment order, and whether the plaintiff is entitled to the benefit of Section 14 or any other provision of the Limitation Act, are all questions requiring adjudication on facts and law.

The Supreme Court in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.*, (2022) 12 SCC 643, while dealing with amendments of pleadings, has observed that although the general rule is that an amendment relates back to the date of institution of the proceedings, the Court may, in an appropriate case, direct otherwise, and the question of limitation remains open wherever such issue requires adjudication.

At the stage of Order VII Rule 11 CPC, the Court can reject the plaint only when the suit is ex facie barred from the averments contained in the plaint itself. In the present case, determination of limitation would necessarily require consideration of the dates of the alleged agreements,

payments, amendment, the nature of the transaction, and the legal effect of the amendment order dated 19.09.2024. Such exercise cannot appropriately be undertaken while deciding an application under Order VII Rule 11 CPC.

Accordingly, the plea of limitation cannot be decided at this preliminary stage and shall remain open to be adjudicated after completion of pleadings and evidence or at any other appropriate stage in accordance with law.

Having considered the plaint as a whole and the settled principles governing Order VII Rule 11 CPC, the Court is of the opinion that:

- (i) the plaint, on its own averments, discloses a cause of action for specific performance and, in the alternative, recovery of money;
- (ii) the objections regarding title of defendant no. 1, authority to enter into the agreement, effect of the earlier decree and judgment of the Hon'ble High Court, and the alleged absence of any contractual relationship with defendant no. 2 constitute matters of defence requiring adjudication on merits;
- (iii) the question whether the relief of permanent injunction has become infructuous may be considered at the stage of final adjudication and does not justify rejection of the plaint;
- (iv) the plea that the alternative relief of recovery is barred by limitation involves mixed questions of law and fact and is not capable of determination under Order VII Rule 11 CPC on the basis of the plaint alone.

The jurisdiction under Order VII Rule 11 CPC is a limited one. At

this stage, the Court is not expected to weigh the merits of the rival claims or adjudicate disputed questions of fact. Since the plaint cannot be said to be barred by law solely on the basis of its own averments, no case for rejection of the plaint is made out.

Consequently, the application filed by defendant no. 2 under Order VII Rule 11 read with Section 151 CPC stands **dismissed**. It is, however, clarified that all questions relating to ownership, authority of defendant no. 1 to enter into the alleged agreement, effect of the judgment dated 09.02.2026 passed by the Hon'ble Delhi High Court, limitation of the alternative claim for recovery, maintainability of the reliefs claimed, and all other legal and factual objections are expressly kept open to be decided at the appropriate stage on the basis of the pleadings, evidence, and applicable law, without being influenced by any observation contained in this order. Nothing contained herein shall be construed as an expression of opinion on the merits of the suit.

Put up for filing list of witnesses by both the parties and evidence by way of affidavit by the plaintiff of all plaintiff witnesses with advance copy to the Ld. Counsel for opposite party in compliance of Order 18 Rule 4 (1A) CPC for 06.10.2026.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/04.07.2026