

1IN THE COURT OF SH. SHIV KUMAR
DISTRICT JUDGE -02, WEST DISTRICT:
TIS HAZARI COURTS, DELHI.

PC NO. 51/2022

OM PRAKASH DAWAR VS STATE & ORS.

ORDER ON THE APPLICATION FILED UNDER
ORDER VII RULE 11 CPC

Dated 06.08.2025

1. Vide this order, I shall decide application filed under order VII rule 11 read with section 151 CPC, on behalf of respondent no. 2 and 4 for rejection of the plaint.
2. It is averred in the application that the provision of Indian Succession Act, 1925 does not allow confusing pleading regarding cause of action.
3. It is further averred in the application that the Will of Late Smt Wanti is a forged Will and the present probate petition has been filed with unclean hands and without any valid and legal cause of action. It is further averred that wrong names of the attesting witness has been mentioned in the petition. So, the attesting witness of the Will are bogus.

4. It is further averred in the application that verification clause of the petition is meaningless and incomprehensible and the petitioner has not mentioned fixed place of abode of the deceased in the petition.

5. It is further averred in the application that no objection has been given by the Lrs in the present matter and the filed NOCs of Lrs are forged and allegedly given in different matter initiated in a year, 2020 and the petitioner fraudulently has not clear his stand as to what happened with his earlier petition of year, 2020. The petitioner has also taken objections regarding incorrect date of Will, wrong address of the petitioner, wrong date of death of father of respondent no. 2 to 4 mentioned in the petition.

6. It is further averred that the petitioner has mentioned two different names of alleged testatrix ie. Smt Wanti Rani at one place and Smt Wanti Devi on another. It is further averred that the petitioner has not shown himself as Lrs of first column, which amounts to admission that the petitioner is not actual Lr of the testatrix.

7. It is further averred that the Lrs of the deceased have not filed fresh NOCs in the present case.

8. Arguments heard from both sides. Case file perused.

9. It is settled law that for deciding an application under order 7 rule 11 CPC, the court has to examine only the averments made in the plaint as well as documents filed with the plaint. The plaint is required to be read as whole and the pleas taken by the defendant in the written statement as well as in the application under order 7 rule 11 CPC cannot be considered for deciding the application. Some of the judgments of Hon'ble Supreme Court of India and Hon'ble High court of Delhi, on the settled principles of law for deciding the application under order VII rule 11 CPC has been discussed in the following Paras:

10. **The Hon'ble Supreme Court of India titled in a case “Ramisetty Venkatanna & Anr Vs Nasyam Jamal Saheb & Ors. Civil Appeal no. 2717 of 2023 decided on 28.04.2023 has held as follows:**

“The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire meaningful reading of the plaint, it is found that suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under order 7 rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold in drastic, the condition enumerated under order 7 rule 11 CPC to the exercise of power of rejection of the plaint have to be strictly adhere to.”

11. In a case titled **Madanuri Sri Rama Chandra Murthy vs Syed Jalal**, decided on 19 April, 2017, AIR 2017 SUPREME COURT 2653, Hon'ble Supreme Court of India has held as follows:

“The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

12. In a case titled **Rajini Khanna Vs Siddharthan, C.R.P.**

352/2023, decided on 02.07.2024 Hon'ble High court of Delhi has held as follows:

“8. There is no gainsaying that the case law is replete with the proposition that the remedy under Order VII Rule 11 CPC is an independent special one, whereby the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence if it is satisfied that the action should be terminated on any of the grounds contained in the provision. 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 plaintiff cannot be allowed to unnecessarily protract the proceedings in the suit, thereby requiring a full-fledged trial and the court can put an end to sham litigation so that precious judicial time is not wasted.”

“9. Avoiding long academic discussion on the subject, in the case of Dahiben v. Arvindbhai Kalyanji Bhanusali, the Supreme Court had an occasion to examine the entire scope and gamut of the applicability of Order VII Rule 11 CPC and reference was made to the decision in Azhar Hussain v. Rajiv Gandhi wherein it was held that —the whole purpose of conferment of power 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.”

“10. Thus, it was held that there is a duty cast on the Court to determine whether the plaint discloses a —cause of action by scrutinising the averments in the plaint, which is to be read in conjunction with the document relied upon. It is also well settled that at this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on merits would be irrelevant, and cannot be adverted to, or taken into consideration”.

13. The petitioner has filed present petition for seeking probate of Will dated 10.12.2019 executed by Late Smt Wanti Devi, who

expired in Delhi on 10.12.2020. The petitioner is the sole beneficiary in the Will in question. So, the petitioner has cause of action to file the present petition after the death of testatrix. The present petition has been filed on 15.07.2022, which is within period of limitation.

14. The contention of the respondents that the pleadings are confusing or Will is forged or NOCs filed by the petitioner are forged or the petitioner has not disclosed the filing of earlier petition, are contention of merits and cannot be decided in the present application. Moreover, for deciding the application under order VII rule 11 CPC, only petition and documents filed by the petitioner can be considered and the defence of the respondents cannot be considered. The respondents have the right to raise the said contentions at the time of framing of issues.

15. The other contention of the respondents regarding wrong details of date of Will, address of the petitioner, name of the attesting witnesses and incorrect verification of petition have already been cured by way of filing amended petition as per order dated 10.01.2025 passed on the application of petitioner filed under order VI rule 17 CPC.

16. In para no. 13 of the petition, the petitioner has mentioned that the fixed place of abode of Late Smt Wanti Devi, at the time of her death, was at Delhi within the jurisdiction of this court. The property bequeathed by the deceased Smt Wanti Devi by way of

Will dated 10.12.2019 falls within the jurisdiction of this court, so, as per Section 276 of Indian Succession Act has the jurisdiction to try the present suit.

17. During arguments, Ld counsel for respondents has argued that the petitioner has not made L&DO as party in the present case, which is a necessary party. It is settled law that the petition cannot be rejected on the ground that one of the necessary party has not been made party in the present case. Moreover, in the opinion of this court, in the present case, the L&DO is not a necessary party as in the present case, the court has not to decide the title of the property in question but has only to decide as to whether, the Will in question is a legal and valid Will.

18. In view of the above-said facts and observations, this court does not find any merit in the application of the respondent no. 2 and 4 filed under order VII rule 11 CPC and the same stands dismissed with cost of Rs. 3000/- to be paid to the petitioner.

19. Nothing expressed in this order shall be considered as opinion on the merit of the case.

**Announced in open Court
today on 06.08.2025**

(SHIV KUMAR)
DJ-02, West Distt.Tis Hazari
courts Delhi.