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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 84/2019**

SMT. BINDU SHARMAPlaintiff

Through: Mr. Akhil Sachar, Ms. Sunanda
Tulsyan and Ms. Kashish
Maheshwari, Advocates

versus

KAPIL SUD & ANR.Defendants

Through: Mr. S.D. Singh, Ms. Meenu Singh
and Mr. Siddharth Singh, Advocates
for D-1. along with Mr. Mohit K..
Mudgal, Ms. Harshita Verma, Mr.
Varyam Pandey and Ms. Palak Garg,
Advocates for D-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **19.11.2025**

I.A. 9387/2023

1. The present application under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been filed by the Defendant No. 1 seeking rejection of the Plaintiff.

2. The present Suit is one for declaration, partition, permanent injunction, and rendition of accounts with respect to property bearing No. M-9, Green Park Main, New Delhi, measuring 500 sq. yards (*hereinafter referred to as "Suit Property"*).

3. For the sake of convenience, the averments in the Plaintiff are summarised hereinunder:

- i. It is stated that the Plaintiff and Defendants No.1 & 2 are the Legal Heirs of Late Major Satya Pal Sud and Late Smt. Promila



Sud. The Plaintiff herein is the daughter of Late Major Satya Pal Sud and Late Smt. Promila Sud and the Defendant Nos. 1 and 2 are their sons.

- ii. It is stated that the Suit property was originally purchased by the Plaintiff's father in the name of her mother, Smt. Promila Sud from one Smt. Sneh Prabha Adya *vide* a registered perpetual lease deed dated 13.12.1957. It is stated that pursuant to a family arrangement in the early 1960s, the property stood transferred to the Plaintiff's father, Late Major Satya Pal Sud, who constructed a residential building on the said property consisting of a Ground Floor and First Floor.
- iii. It is stated that Major Satya Pal Sud passed away on 29.05.1967 *intestate* and the suit property devolved in equal shares upon Smt. Promila Sud, the Plaintiff herein and the Defendants herein. However, the mother of the parties was in possession of the suit property and has been drawing rent from the Ground Floor of the said property.
- iv. It is stated that the Plaintiff resided in the Suit Property until her marriage in 1977 and thereafter, she moved to Canada in 1989 and she is currently residing in the USA. It is stated that the Plaintiff used to visit India from time to time. It is stated that the Defendants got married in 1986 and started living separately. It is further stated that the mother of the Plaintiff continued to reside in the Suit Property.
- v. It is stated that in 1990, the Plaintiff and the Defendants executed affidavits dated 27.12.1990 thereby agreeing that the Suit property



would not be partitioned by metes and bounds during the lifetime of their mother, and pursuant thereto, the property was mutated in the name of Smt. Promila Sud.

- vi. It is stated that Smt. Promila Sud passed away on 06.01.2016. It is alleged by the Plaintiff that shortly after the death of her mother, Defendant No.1 entered the Suit Property with the help of duplicate keys and removed valuables, including documents, jewellery, antiques and cash.
- vii. It is stated that the parties attempted to settle the disputes amicably in January–February 2016, however, the settlement talks failed, with Defendant No.1 refusing to partition the property and asserting his exclusive ownership over the Suit Property. It is stated that in the second round of settlement talks in January, 2016, the Defendant offered only 15% share in the Suit Property to the Plaintiff, which was refused by the Plaintiff.
- viii. It is stated that the Defendant No.1, acting in collusion with the tenant and showing himself as the landlord of the Suit Property, began collecting the entire rent of the Suit Property from January 2016 onwards.
- ix. It is stated that the Plaintiff sent a legal notice dated 02.05.2016 to the Defendants asserting her legal right over the Suit Property. It is stated that the said legal notice was replied to by the Defendants *vide* replied dated 14.05.2016 and 12.06.2016, wherein, for the first time they disclosed about a Will dated 25.11.2014, purportedly executed by Smt. Promila Sud in favour of the Defendants.



- x. It is further stated that on approaching the Government Offices, the Plaintiff discovered that the Defendants have obtained a mutation dated 08.04.2016 in favour of Defendant No.1.
- xi. It is stated that the Plaintiff approached the Sub-Registrar office to get a copy of the Will dated 25.11.2014 and the same was provided to her on 31.08.2016. It is stated that on obtaining a copy of the Will dated 25.11.2014, the Plaintiff found that the said Will is forged. Accordingly, the Plaintiff filed a criminal complaint, being CC No.283/1 with the Deputy Commissioner of Police, South Delhi, Hauz Khas, on 25.11.2016 alleging fabrication of the Will. It is stated that the Magistrate took cognizance of the complaint on 30.08.2017 and granted opportunity to the Plaintiff to prove her case by leading evidence.
- xii. Contending that the Will dated 25.11.2014 is forged and fabricated, and the mutation obtained by the Defendants *qua* the Suit Property is illegal, the Plaintiff has approached this Court seeking the following:
 - a. Declaration that the Will dated 25.11.2014 is illegal, forged, fabricated, and unenforceable;
 - b. Declaration that the mutation order dated 08.04.2016 is void and inoperative;
 - c. Preliminary and final decree of partition of the suit property by metes and bounds, granting the Plaintiff her 1/3rd share;
 - d. Permanent injunction restraining the Defendants from selling, transferring, alienating, or creating third-party



interests in the property;

e. Rendition of accounts for rent wrongfully collected by Defendant No.1 from January 2016 onwards.

xiii. The valuation of the suit property has been given in the Plaint as approximately Rs. 6 crores.

xiv. Thereafter, the Defendant No. 1 filed an application under Order VII Rule 11 of CPC rejection of the plaint on the ground of undervaluation of the Suit and insufficient payment of court fees.

4. Learned Counsel for the Defendant No.1/Applicant submitted that the Plaintiff has deliberately concealed the true valuation of the Suit Property and has affixed only a nominal court fee of ₹200/- despite valuing the property at a substantial figure in the Plaint. According to the Defendant No.1, the act of the Plaintiff in undervaluing the Suit and filing insufficient court fee is a gross abuse of the process of law and renders the Plaint to be rejected at *ex facie*.

5. It is further stated that it is absurd for the Plaintiff to claim possession, or constructive possession, over the Suit Property while being permanently settled abroad and, therefore, the Plaintiff cannot seek to pay a fixed court fee under the assumption of joint possession. It is further submitted that even at the circle rate, the value of the suit property comes to Rs.11,04,73,073/-, and therefore the Plaintiff is mandatorily required to pay *ad valorem* court fees on this valuation and since the Plaintiff has affixed only Rs.200/- as the court fee, the plaint is insufficiently stamped and is liable to be rejected under Order VII Rule 11(b) and (c) of the CPC.

6. *Per Contra*, learned Counsel for the non-applicant vehemently opposes the submissions made by the learned Counsel for the Applicant.



7. Heard the learned Counsels for the parties and perused the material on record.

8. For the adjudication of the present application, it is pertinent to refer to Order VII Rule 11 of the CPC, which 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, but the plaint is returned 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, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law:*

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 from 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 grave injustice to the plaintiff.”

9. The law relating to rejection of a plaint under Order VII Rule 11 of the CPC is crystallized through various judgments of the Apex Court. The



Apex Court in Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510, has held as under:

“13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code 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 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 Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V.



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Satyapal [(1977) 4 SCC 467] .)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands



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of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

10. A perusal of the above judgment shows that 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 very threshold, without proceeding to record evidence or 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 under Order VII Rule 11 of the CPC. The whole purpose of conferment of such powers 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.

11. While deciding an application under Order VII Rule 11 of the CPC, this Court is confined only to examining the averments in the Complaint and to see as to whether a real cause of action has been set out in the Complaint or not and to make sure that the complaint is not manifestly vexatious and meritless.

12. Having considered the submissions and perused the material on record, this Court finds no merit in the present application as there is no ground to entertain the present application under Order VII Rule 11 CPC. The Defendant No.1 has invoked clauses (b) and (c) of Rule 11 of the CPC on the premise that the Plaintiff has undervalued the Suit and affixed insufficient court fees. However, in a Suit for partition where the Plaintiff asserts joint possession of the property, the Plaintiff is entitled to value the relief of partition as per Section 7(iv)(b) of the Court Fees Act, 1870. The said provision states that the court-fee shall be determined based on the



share claimed by the contesting party. The averments in the Complaint reveal that the parties are co-owners and that the Plaintiff continues to remain in constructive and legal joint possession of the Suit Property. Whether such possession is factually established is a matter for trial, and at this stage, the averments in the complaint must be taken at face value.

13. It is settled law that for the purposes of Order VII Rule 11, the Court cannot look into the pleas raised by the Defendant to contradict the complaint, nor can it embark upon a disputed enquiry into possession or title. The plea of undervaluation is, thus, premature and cannot be adjudicated in an application under Order VII Rule 11 of the CPC.

14. As held by the Apex Court in Neelavathi & Ors. v. N. Natarajan & Ors., (1980) 2 SCC 247, when the Plaintiff asserts joint possession, he/she is not required to pay *ad valorem* court fees on the market value of the entire property, and the valuation stated in the Complaint must be accepted at the preliminary stage. The Defendant's contention that the Plaintiff resides abroad does not *ipso facto* negate joint possession, nor does absence of physical occupation defeat the concept of constructive possession among co-heirs. Whether the Plaintiff is in joint possession or she has been ousted is a mixed question of fact and law, which is to be determined only after parties lead evidence. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the Plaintiff should be in actual possession of the whole or part of the property. So long as his right to a share and the nature of the property as joint, the law presumes that he is in joint possession which does not require the payment of *ad valorem* Court fees.



15. The fact that the Plaintiff is seeking for the declaration for cancellation of the will is also not relevant for payment of *ad valorem* Court fees. It is settled law that where the executants of a deed wants a deed to be annulled, he has to seek cancellation of a deed but if a non-executant seeks for an annulment of a deed, he has to seek a declaration that the deed is invalid or *non est* or illegal i.e., not binding on him. If the executants seek cancellation of a deed, he has to pay *ad valorem* Court fees, but if a non-executant seeks for a declaration, then the deed is null and void and it does not bind him, he has to be merely fixed at Court fees and not *ad valorem* Fees (refer to Suhrid Singh v. Randhir Singh And Others, 2010 12 SCC 112).

16. The Plaintiff herein is seeking for partition of the properties of the mother, evidently, the Plaintiff is deemed to be in possession of the property, even though she is not in actual possession.

17. The question of court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the materials allegations contained in the plaint should be construed and taken as a whole.

18. Accordingly, the application is dismissed.

CS(OS) 84/2019, I.A. 16481/2023 & I.A. 7885/2025

19. List on 26.11.2025 in the Supplementary list.

SUBRAMONIUM PRASAD, J

NOVEMBER 19, 2025

Rahul

