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

\# **CNR No. DLHC010257842023**

\+ CS(OS) 411/2023

NEETU SAINI & ANR. .....Plaintiffs

Through: Ms. Anisha Jain, Advocate.

versus

RAJESH KUMAR SAINI & ANR. .....Defendants

Through: Mr. Sanjeev Dawar, Advocate for D-2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>O R D E R</u>

% **10.08.2026**

<u>I.A. 7608/2024</u>

1. This Application under Order VII Rule 11(a) CPC has been filed on behalf of the Defendant No.1 seeking rejection of the Plaint.

2. The present Suit has been filed by the Plaintiffs seeking partition, permanent injunction, declaration and *mesne profits* in respect of property bearing No. C-2, Housing Society, South Extension, New Delhi-110049, admeasuring 200 sq. yds (*hereinafter referred to as 'the Suit Property'*). The Plaintiffs claim 1/3rd share in the suit property, along with their corresponding share in the rental income/*mesne* profits being earned from the property since July 2021.

3. Before dwelling into the facts of the case, it is pertinent to mention that the parties are members of the same family. Late Sh. Manohar Lal Saini and Smt. Dhanwati had three sons, namely Sh. Rajesh Saini (Defendant

No.1), Sh. Rakesh Saini (Defendant No.2) and Late Sh. Anil Kumar Saini (husband of Plaintiff No.1 and father of Plaintiff No.2), and four daughters, namely Smt. Urmil Saini, Smt. Renu Saini, Smt. Asha Saini Bharal and Smt. Poonam Saini. Thus, Plaintiff No.1 is the sister-in-law and Plaintiff No.2 is the nephew of the Defendants.

4. Facts, in brief, leading to the present Suit, are as that the suit property was purchased by Late Sh. Manohar Lal Saini along with his three sons, Rajesh, Rakesh and Anil, through two Sale Deeds dated 29.03.1975 and 04.08.1975, each relating to 100 sq. yds., thereby constituting the present 200 sq. yds. property. Subsequently, Smt. Dhanwati and the four daughters, Urmil, Renu, Asha and Poonam, relinquished their rights in the Suit Property in favour of Rajesh (Defendant No.1), Rakesh (Defendant No.2) and Anil (Husband of Plaintiff No.1) *vide* Relinquishment Deed dated 09.06.2014. It is stated that Smt. Dhanwati executed a Will dated 13.06.2014 bequeathing her movable and immovable properties in favour of Rajesh (Defendant No.1), Rakesh (Defendant No.2) and Anil (Husband of Plaintiff No.1).

5. It is stated that the Suit Property was being peacefully enjoyed by the three brothers, with the first floor in possession of Defendant No.1, the second floor in possession of Late Anil Kumar Saini and the third floor in possession of Defendant No.2. It is stated that Late Sh. Anil Kumar Saini Passed away on 07.05.2021.

6. According to the Plaintiffs, after the death of Anil Kumar, the Defendants started exerting pressure upon the Plaintiffs to vacate the suit property. The Plaintiffs state that they remained in possession of the Suit Property till June 2021, but thereafter, owing to the pressure exerted by the

Defendants, they shifted to a rented accommodation, while the Defendants continued to remain in possession of the suit property. It is stated that the Defendants are enjoying rental income which is being generated from the portions of the suit property which have been let out. It is stated that two godowns in the Basement are yielding rental income of approximately Rs.15,00,000/- per month, while the Second Floor is stated to be fetching approximately Rs.2,00,000/- per month in rent. Thus, according to the Plaint, the total rental income from the suit property is approximately Rs.17,00,000/- per month.

7. It is stated that despite repeated requests and reminders by Plaintiff No.1 for partition and for handing over the Plaintiffs' claimed 1/3rd share, the Defendants failed to partition the property or share the rental income. Accordingly, the Plaintiffs have filed the present Suit seeking partition, declaration, permanent injunction and *mesne profits*.

8. The present application has been filed by Defendant No.1 under Order VII Rule 11 read with Section 151 CPC seeking rejection of the Plaint. The applicant contends that the Suit is not maintainable and is an abuse of the process of law on account of suppression of material facts. The principal ground raised by the Defendant No.1 in the present Application is that neither Plaintiff No.1 nor her deceased husband was the owner of the suit property, and, in any event, the property has been mortgaged with a bank. It is contended that since the property is under mortgage, the bank is a necessary party and, in the absence of its impleadment, the Suit seeking partition and other reliefs is not maintainable. It is further stated that the Plaintiff was fully aware of the mortgage and the proceedings initiated under the SARFAESI Act, but deliberately did not disclose these material facts in

the Plaint. According to the Defendant No.1, notice under the SARFAESI Act had been issued and the Plaintiff was apprised of the mortgage and was even asked to settle the issue, yet these facts were concealed while instituting the Suit in 2023. Defendant No.1 further relies upon the Plaintiff's reply to the bank's notice in 2021, wherein, Plaintiff No.1 had stated that she had nothing to gain from the property and had no objection if the property was disposed of in the manner considered appropriate by the bank. It is therefore alleged that the Plaintiff, despite having taken such a position earlier, subsequently instituted the present Suit claiming rights in the same property and thereby suppressed material facts from the Court. It is, therefore, contended that the Suit property cannot be partitioned unless and until the mortgage/encumbrance in favour of the bank is discharged, particularly as the original title documents are with the bank. On this basis, Defendant No.1 asserts that the Suit is not maintainable and is liable to be rejected under Order VII Rule 11 CPC.

9. Heard the Counsels and perused the material on record.

10. 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 form 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."

11. 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 <u>Popat and Kotecha Property v. State Bank of India Staff Assn.</u>, **(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. 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 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."

12. A Perusal of the above observations of the Apex Court shows that while deciding an application under Order VII Rule 11 of the CPC, this Court is confined only to examining the averments in the Plaint and the documents filed. The defence of the Defendant or disputed questions of fact

cannot ordinarily be examined at this stage. The Plaint can be rejected only if, on a meaningful reading of its averments, it falls within one of the contingencies specifically contemplated under Order VII Rule 11 CPC.

13. In the present case, the principal contention of Defendant No.1 is that the Suit Property has been mortgaged with a bank and, therefore, the bank is a necessary party and the property cannot be partitioned until the mortgage is discharged. The said contention, however, does not demonstrate that the Suit is barred by any law on the face of the Plaint. The mere existence of a mortgage over property does not, by itself, extinguish the rights or title of the mortgagor so as to render a suit, which is for adjudication of *inter se* rights of the co-owners, non-maintainable. The effect of the mortgage, the extent of the interest of the parties and the manner in which any partition, if ultimately decreed, would operate subject to the rights of the mortgagee are matters which cannot be conclusively determined in an application under Order VII Rule 11 CPC.

14. Further, the assertion that the Plaintiff had no ownership over the Suit Property or that Late Sh. Anil Kumar Saini was not an owner of the Suit Property is a disputed question touching upon the title and rights of the parties. The Plaint specifically sets up a claim of title and succession in favour of the Plaintiffs. Whether that claim is ultimately established is a matter for adjudication upon the pleadings and evidence and it cannot be decided merely on the basis of the assertions made by the Defendant in the present application.

15. Further, the contention that the bank becomes the owner of the Suit Property merely because the property has been mortgaged is not a ground on which the Plaint can be rejected at the threshold. The rights of a mortgagee

and the rights claimed by the parties to the Suit are distinct and the existence of a mortgage does not, by itself, render every claim concerning the mortgagor's interest in the property legally non-maintainable.

16. Upon a meaningful reading of the Plaint and the grounds raised in the present application, no ground contemplated under Order VII Rule 11 CPC for rejection of the Plaint is made out.

17. Off late this Court is noticing that frivolous Applications under Order VII Rule 11 CPC are being filed by the parties. Applications under Order VII Rule 11 CPC ought not to be filed as a matter of routine, particularly where the grounds urged therein essentially raise disputed questions of fact or seek adjudication of the defence of the Defendant under the guise of a preliminary objection. Filing such applications without there being a clear and sustainable ground for rejection of the plaint unnecessarily delays the progress of the Suit and consumes valuable judicial time.

18. In the opinion of this Court, the present Application is one such frivolous application. Though this Court was inclined to impose costs upon Defendant No.1 for filing the present application, which has been found to be devoid of merit. However, keeping in view that the matter has been argued by a young counsel, the Court refrains from imposing costs as a measure of courtesy and encouragement at the Bar.

19. Accordingly, the present application is dismissed. It is clarified that the observations made herein are only for the purpose of deciding the present application and shall not be construed as an expression on the merits of the case.

<u>I.A. 44230/2024 & I.A. 18141/2025</u>

20. List before the Ld. Joint Registrar on 22.09.2026 for considering the

present applications.

SUBRAMONIUM PRASAD, J

AUGUST 10, 2026
Rahul