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

+ **CS(OS) 572/2022 & I.A. 15074/2022, I.A. 24957/2025**

NEETA KAUSHAL

.....Plaintiff

Through: Ms. Seema Seth, Ms Muskaan
Deswal, Mr. Sourav Kumar, Ms.
Kashish Jain Advs.

versus

ASHOK VASHISHT & ORS.

.....Defendants

Through: Mr. R K Sharma, Mr. Sandeep
Bhardwaj, Mr. Abhishek Sharma, Mr.
Ujjwal Pratiyush, Ms Divya Sharma,
Advocates for Defendant No 3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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02.02.2026

I.A. 22151/2022

1. This is an application on behalf of Defendant No.3 under Order VII Rule 11 of the CPC for rejection of the plaint on the grounds that the Suit is barred by limitation, suffers from a lack of cause of action and since there is a Will in favour of Defendant No.3, the Suit is not maintainable in the eyes of law.

2. The Plaintiff has filed the instant Suit seeking partition, rendition of accounts, recovery of *mesne profits*/damages and injunction with respect to the Suit Properties being (i) Built Up Plot No. 1, Ashoka Park Extension, Rohtak Road, Delhi measuring 217 sq. yds.; (ii) Plot No. H-1205, DSIIDC



Complex, Narela, measuring 417 sq. yds.; and (iii) Property No. 6, Channa Mal Park, New Rohtak Road, Delhi. The Plaintiff claims 1/4th share in the Suit Properties and as such, prays for a preliminary decree for awarding 1/4th share and partition of the Suit Properties by metes and bounds and if that is not possible, alternatively, the Plaintiff has sought for sale of the Suit Properties, awarding 1/4th share of the sale proceeds to be handed over to the Plaintiff.

3. It is stated that the Plaintiff and the Defendants are siblings, being the children of Late Om Prakash Vashisht and Late Kaushalya Devi. The father of the parties, i.e., Om Prakash Vashisht passed away on 16.01.2006 and the mother of the parties, i.e., Kaushalya Devi passed away on 16.12.2007.

4. It is stated that Late Om Prakash Vashisht executed a Will dated 17.06.2005 bequeathing the property bearing No. 1, Ashoka Park Extension, Rohtak Road, Delhi, comprising of a three-storied structure with basement in favour of his wife, i.e., mother of the parties. Apart from the said property, he also bequeathed the property bearing No. I-178, Village Bindapur, Uttam Nagar, New Delhi in favour of his wife.

5. It is stated that the mother of the parties also owned and possessed the property bearing No.6, Channa Mal Park, New Rohtak Road, Delhi admeasuring 70 sq. yds., which is a vacant plot purchased by her from one Bhawani Devi *vide* registered Sale Deed dated 18.12.1968.

6. It is stated that after the demise of the father of the parties, their mother also passed away intestate on 16.12.2007, leaving behind the following three properties:-

- i. Built up house on Plot No.1, Ashoka Park Extension, Rohtak Road, Delhi measuring 217 sq. yds.;



- ii. Freehold built up property bearing No.I-178, admeasuring 205 sq.yds., situated in village Bindapur in the abadi known as Uttam Nagar, Delhi;
 - iii. Property No.6, Chunna Mal Park, New Rohtak Road, Delhi.
7. It is stated that the father of the parties also owned and possessed the following properties:-
- i. Plot No. H-1205, DSIDC Complex, Narela, Delhi, measuring 417 sq. yds.; and
 - ii. Ancestral property at Rewari (Haryana)
8. It is stated by the Plaintiff that her mother made an undated Will in respect of the property bearing No. No.6, Chunna Mal park, New Rohtak Road, Delhi admeasuring 70 sq. yds out of Khasra No.224 in the area of Basai Darapur, Delhi. It is, however, stated that this undated Will has no attesting witness and therefore the same would have no force in law.
9. It is further stated in the Complaint that the late father of the Plaintiff was carrying on a business in the name and style of 'United Industries' as its Sole Proprietor, operating from Plot No.S-88, Badli Industrial Area, Delhi.
10. After the demise of the father of the parties, the business was carried out by the mother of the parties under the name and style of the same sole proprietorship. Further, after the death of the mother of parties, the business was being carried out by Defendant No.2 and the son of Defendant No.1, who converted the property to freehold in the name of Defendant No.1 and the wife of Defendant No.2.
11. It is also stated in the Complaint that the Defendant No.3, i.e., the Applicant herein, claims that his late father left behind the registered Will dated 27.07.2005. However, since no copy of the said Will was shared by



the Defendant No.3 with anyone, as well as the fact that the parties' late father was severely ill and bed-ridden for 6-7 years before his demise and therefore not in a position to write a will and be present before the Registrar for its registration, the Will dated 27.07.2005 is shrouded by suspicious circumstances.

12. It is stated by the Plaintiff that at a later point in time, acrimony between the mother of the parties and Defendant No.3 herein arose, resulting in a police complaint being filed by the late mother against Defendant No.3. Pertinently, the Plaint states that the parties' late mother severed all her ties with the Defendant No. 3 and his wife, while also disowning the Defendant No. 3 and his wife from all her moveable and immoveable properties.

13. Reading of the Plaint also indicates that *vide* a Legal Notice dated 07.10.2021, the Plaintiff *inter alia* called upon the Defendants to partition the Suit Properties. While the Defendants No. 1 and 2 agreed to the partitioning of the Suit Properties by issuing a Reply on 03.12.2021, the Defendant No. 3 did not respond to the Legal Notice sent by the Plaintiff.

14. Thereafter, since none of the Defendants came forward to partition the Suit Properties, the Plaintiff approached this Court by way of the present Suit.

15. By way of the instant Application under Order VII Rule 11 of the CPC, the Applicant/Defendant No.3 has raised the following grounds, praying for the rejection of the Plaint:-

- i. The instant Suit is barred by limitation on account of being filed only in the year 2022, i.e., 15 years after the death of the mother of the parties, while Article 65 of the Limitation Act, 1963, provides that a suit for possession of an immovable property or



any interest therein based on title shall be filed within 12 years from the date on which the possession of the defendant becomes adverse to the plaintiff.

- ii. Further, the present Suit lacks a valid cause of action as it is based on falsehood. It is contended that the Plaintiff has acknowledged the late father's Will dated 17.06.2005 as also the subsequent Will dated 27.07.2005.
 - iii. It is stated that under the late father's Will dated 17.06.2005, the mother only held a life interest or a restricted/conditional interest rather than absolute ownership and therefore, the Plaintiff cannot claim 1/4th share in the Suit Properties.
 - iv. Additionally, the present Suit is undervalued and the Plaintiff has failed to pay the proper court fees. It is also stated that since the Plaintiff is not in actual possession of the property bearing Plot No. 1, Ashoka Park Extension, Rohtak Road, Delhi, she cannot claim fixed court fees based on constructive possession and the Plaintiff must pay the full prescribed court fee to maintain the Suit.
 - v. It is lastly stated that the instant Suit is a collusive attempt by the Plaintiff and Defendants No.1 and 2, in order to take away the legitimate share of the Defendant No.3. He states that the Plaintiff has deliberately chosen not to claim any share in other properties held by Defendants No.1 and 2.
16. Heard learned Counsel for the parties and perused the material on record.
17. Though the Written Statements have been filed by the Defendants,



this Court shall confine itself to the averments made in the plaint and the supporting documents, for the purpose of the instant Application.

18. The law regarding rejection of plaint under Order VII Rule 11 of the CPC has been crystallized by the Apex Court in a catena of Judgments. Reference in particular is being made to the discussion of the Apex Court in Indian Evangelical Lutheran Church Trust Association v. Sri Bala & Co., **2025 SCC OnLine SC 48**, relevant part of which is stated as under:-

“6.1. ...

(i) In T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467, this Court while examining the aforesaid provision has held that the trial court must remember that if on a meaningful and not a 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 VII 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 X of the Code, as observed by Krishna Iyer, J.

(ii) The object of the said provision was laid down by this Court in Sopan Sukhdeo Sable v. Assistant Charity Commissioner, (2004) 3 SCC 137. Similarly, in Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510, this Court has culled out the legal ambit of Order VII Rule 11 of the Code.

(iii) It is trite law that not any particular plea has to be considered, but 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. Similarly, 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 Order VII of the Code is applicable.

(iv) It was further held with reference to Order VII Rule 11 of the Code in Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557 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 i.e. 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 VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

(v) In R.K. Roja v. U.S. Rayudu, (2016) 14 SCC 275, it was reiterated that the only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case the entire plaint comes under the situations covered by Order VII Rules 11(a) to (f) of the Code, the same has to be rejected.

(vi) In Kuldeep Singh Pathania v. Bikram Singh Jaryal, (2017) 5 SCC 345, this Court observed that the court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written



statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

(vii) In an application under Order VII Rule 11 of the Code, a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsd Ahmad v. Mathra Datt & Co. AIR 1936 Lah 1021. This principle is also explained in another decision of this Court in Sejal Glass Ltd. v. Navilan Merchants Private Ltd., (2018) 11 SCC 780 which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd., (2019) 7 SCC 158.

(viii) In Biswanath Banik v. Sulanga Bose, (2022) 7 SCC 731, this Court discussed the issue whether the suit can be said to be barred by limitation or not, and observed that at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) of the Code on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole.”

19. Applying the law laid down by the Apex Court to the facts of the present case, this Court is of the opinion that at the very outset, Article 65 of the Limitation Act, 1963, would not be attracted for rejection of the instant Plaint, since the same deals with adverse possession, which is a pure



question of law. In the present case, if the Defendant No.3 is claiming adverse possession, he also has to prove that he claimed title to the Suit Property(ies). Proof of the fact that the possession is open, continuous, hostile and adverse to the Plaintiff would also have to be tendered in trial. All of these factors cannot be examined while considering an application under Order VII Rule 11 of the CPC, which is restricted only to averments in the plaint and the supporting documents.

20. This Court has noted that in the Plaint, it is stated that the cause of action arose on 07.10.2021, when the Plaintiff sought for partition of the Suit Properties and rendition of accounts, which was not acted upon. As such, the Suit having been filed in the year 2022 is *prima facie* within limitation. Therefore, the contention of the Defendant No. 3/Applicant that the Suit is time-barred, cannot be accepted.

21. The second averment of Defendant No.3 is that the Suit lacks valid cause of action and is based on 'falsehood'. It is averred that the Plaintiff has acknowledged her late father's Will dated 17.06.2005, however, denied the subsequent Will dated 27.07.2005.

22. It is further pointed out that the Plaintiff has mentioned the first Will dated 17.06.2005, under which the properties were bequeathed upon the late mother of the parties and after the death of the mother of the parties, the said properties were open to partition.

23. The Plaint further states that even the late mother of the parties left behind an undated will, which does not have any attesting witnesses.

24. Regarding the Will dated 27.07.2005, it is stated in the Plaint it was the Defendant No. 3 who claimed that the parties' late father left behind the said will dated 27.07.2005. However, it is the case of the Plaintiff that the



said Will is surrounded by suspicious circumstances as at that point of time, her father was suffering from paralysis and therefore not in a position to propound a will at all, let alone be present before the Registrar on the said date for its registration. It is also stated that on the date when the said Will was registered, police complaints were given by the mother of the parties against Defendant No.3.

25. Be that as it may, the mere fact that the Plaintiff has not sought for a declaration that the Will dated 27.07.2005 is bad, will not by itself lead to the rejection of the plaint. During the trial, it would be shown that as to when did the Plaintiff come to know of the Will and whether the Suit has been filed within the period of limitation from the date on which the Plaintiff came to know of the said Will.

26. It is trite law that the 'knowledge' is a mixed question of fact and law which will have to be proved in trial [Ref: Salim D. Agboatwala & Others v. Shamalji Oddhavji Thakkar & Others, (2021) 17 SCC 100].

27. It is further well settled that the remedy under Order VII Rule 11 of the CPC is an extraordinary remedy and unless on a reading of the plaint, it is clear that the same is manifestly vexatious and does not disclose a clear right to sue, a plaint cannot ordinarily be rejected.

28. In the opinion of this Court, the present case is not one of clever drafting where a mere illusory right has been created.

29. With these observations, the application is dismissed.

I.A. 11035/2025

30. This is an application on behalf of the Plaintiff under Order XXXIX Rule 10 of the CPC for directions to Defendant No.3 to deposit the rent collected from the suit premises being Plot No. H-120S , DSIDC Complex,



Narela, Delhi, measuring 417 sq. yds.

31. A copy of the Application has been handed over to the learned Counsel for Defendant No.3 in Court today.

32. Let reply to the Application be filed within one week from today. Response thereto, if any, be filed within a week thereafter.

33. List before the learned Joint Registrar for completion of pleadings on 23.03.2026.

34. List before the Court on 27.04.2026.

35. Both sides are directed to file and exchange the proposed issues before the next date of hearing.

SUBRAMONIUM PRASAD, J

FEBRUARY 02, 2026

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