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

+ RSA 26/2024 & CM APPL. 6349/2024, CM APPL. 6351/2024, CM APPL. 6934/2024, CM APPL. 6935/2024, CM APPL. 8384/2024, CM APPL. 33644/2024, CM APPL. 53361/2024, CM APPL. 54852/2024, CM APPL. 60505/2024, CM APPL. 19256/2025

MALKHAN SINGH (DECEASED) THROUGH LRS AND ORS.

.....Appellants

Through: Mr. Ankit Jain, Sr. Advocate with
Ms. Vatsala Chauhan, Advocate.

versus

RAKESH JAIN AND ORS.

.....Respondents

Through: Ms. Sangeeta Jain with Mr. Avneesh
Garg, Ms. Iptisha and Mr. Ayush
Pundir, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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06.11.2025

CM APPL. 68858/2025

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

CM APPL. 68857/2025

By way of the present application filed under section 151 of the Code of Civil Procedure 1908 ('CPC'), respondent No.1/applicant seeks to place on record the 'correct reproduction' of para 21 of the plaint in suit bearing CS (OS) No.197/2017 ('earlier suit'), which was a



prior suit filed by the appellant (plaintiff in the suit).

2. Ms. Sangeeta Jain, learned counsel appearing for respondent No.1 submits, that the correct text of para 21 is relevant for deciding CM APPL. No.19271/2025, by which respondent No. 1 seeks rejection of the present regular second appeal.
3. Mr. Ankit Jain, learned senior counsel appearing for the appellants submits, that in view of the limited prayer made, they do not object to the present application being allowed.
4. Accordingly, the present application is allowed.
5. Para 21 of the earlier suit as set-out in this application will be read as the correct text of para 21 of that plaint.
6. Application stands disposed-of.

CM APPL. 19271/2025

7. By way of the present application filed under Order XXIII Rule 1(4) CPC, respondent No.1/applicant seeks rejection of the present appeal based on the contention that the suit bearing CS SCJ No.348/2018 ('later suit') filed by the appellants, from which the present second appeal arises, was barred under the provisions of Order XXIII Rule 1(4) CPC.
8. Notice on this application was issued on 15.04.2025.
9. Mr. Ankit Jain, learned senior counsel appearing for the appellants submits, that they do not wish to file a reply to this application.
10. The court has heard Ms. Jain; as well as Mr. Jain in opposition to this application, at length.



11. At the outset, the text of Order XXIII Rule 1(4) of the CPC is required to be noticed :

1. Withdrawal of suit or abandonment of part of claim.—

(1) * * * * *

(2) * * * * *

(3) * * * * *

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1),
or

(b) withdraws from a suit or part of a claim without the
permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(emphasis supplied)

12. Ms. Jain argues, that the prayer made by the appellants in the earlier suit was verbatim the same as the prayer made in the later suit. She submits that the earlier suit that was filed before this court (by reason of the pecuniary jurisdiction of this court at the relevant time) was disposed-of as withdrawn, for the reasons as recorded in orders dated 04.05.2017 and 09.05.2017 made in CS (OS) No.197/2017. The relevant portion of which said orders reads as under:

Order dated 04.05.2017

“5. On being asked to show the provisions of the Court Fees Act, 1872 in this regard, the counsel for the plaintiffs draws attention to Section 7(v) thereof. However, Section 7(v) of the Court Fees Act deals with suits for possession and not suits for declaration. The relevant provision qua suit for declaration is Section 7(iv)(c) which though provides that in suits to obtain a declaratory decree and consequential relief, the court fees will be according to the amount at which the relief sought is valued in the



plaint. The plaintiffs, in the plaint, have valued the suit for the purpose of jurisdiction at Rs.5,78,03,125/- and for the purpose of court fees at Rs.200/-. However Section 8 of the Suits Valuation Act, 1887 provides in a suit under Section 7(iv)(c) of the Court Fees Act, the valuation for the purposes of jurisdiction shall be the same as the valuation for the relief of court fees. The plaintiffs thus cannot value the suit under Section 7(iv)(c) differently for purpose of court fees and jurisdiction. Schedule II to the Court Fees Act titled 'Fixed Court Fees at Article 17(iii) thereof provides for a suit to obtain a declaratory decree where no consequential relief is prayed and requires a fixed court fees for Rs. 10/- to be paid thereon. Valuation of such suits for purposes of jurisdiction, as per Section 4 of the Suits Valuation Act, has to be as per the valuation of the land at the rates prescribed in Section 3 thereof. It is not disclosed in the plaint as to what is that value.

“6. Though the counsel for the plaintiffs states that time be given to deposit ad valorem court fees as demanded by the Registry but the counsel, if so chooses, to verify the aforesaid aspect (sic).

“7. Even otherwise, once it is the plaintiffs' own case that the plaintiffs, notwithstanding being not in possession, are not claiming the relief of possession owing to the pendency of the eviction proceedings, it appears that the dispute relating to title will also be adjudicated in the eviction proceedings and there is no cause of action for this suit.

* * * * *

"12. It is deemed appropriate to give time to the counsel for the plaintiffs to consider all the said aspects."

Order dated 09.05.2017

“1. The counsel for the plaintiffs in response to the queries raised in the order dated 4th May, 2017 seeks to withdraw the suit with liberty to take appropriate proceedings.

“2. Dismissed as withdrawn with liberty aforesaid.

“Dasti.”

(emphasis supplied)



13. It is Ms. Jain's contention, that the liberty granted to the appellants *vide* order dated 09.05.2017 was "*to take appropriate proceedings*" and no liberty was granted to them *to file a fresh suit*.
14. It is accordingly argued, that the later suit filed by the appellants before the learned district court was not maintainable at all, especially since the prayers made in the earlier suit and in the later suit are verbatim the same. Ms. Jain submits, that in fact all the averments contained in the earlier plaint and in the later plaint are also exactly the same.
15. It is Ms. Jain's contention, that the later suit is accordingly barred under the provisions of Order XXIII Rule 1(4)(b) CPC, since at the time of withdrawal of the earlier suit, no permission was sought or granted to withdraw that suit and to file a subsequent suit on the same cause of action and seeking the same relief.
16. On the other hand, Mr. Jain, learned senior counsel appearing for the appellants submits, that *firstly*, the liberty granted to the appellants at the time of the withdrawal of the earlier suit was "*to take appropriate proceedings*", which was liberty of the widest amplitude, in its text and tenor; and that therefore, it was available to the appellants to file the later suit before the learned district court. Moreover, Mr. Jain points-out, that in the written statement filed by respondent No.1 in the later suit, no objection was taken by the respondents to the effect that the later suit was not maintainable under Order XXIII Rule 1(4)(b) CPC.
17. *Secondly*, Mr. Jain argues that the learned trial court has rejected the plaint under Order VII Rule 11 CPC as being barred by section 34 of the Specific Relief Act, 1963 (since the suit was filed seeking a mere declaration); and also on the point that the relief claimed in the suit in



relation to the daughter would be governed by section 6 of the Hindu Succession Act, 1956 and *not* by section 50 of the Delhi Land Reforms Act, 1954.

18. Learned senior counsel submits, that the first appellate court has partly upheld the view taken by the learned trial court, which is subject matter of the challenge in the present second appeal.
19. Mr. Jain also points-out, that the later suit was filed by them in 2018, that is soon after the withdrawal of the earlier suit on 09.05.2017.
20. In the opinion of this court, the contention raised by respondent No.1 by way of the present application is untenable since Order XXIII Rule 1(4)(b) in fact refers back to Order XXIII Rule 1(3), the provisions of which must also be noticed :

1. Withdrawal of suit or abandonment of part of claim.—

*(1) * * * * **

*(2) * * * * **

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect,
or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(emphasis supplied)

21. Accordingly, on a plain reading of Order XXIII Rule 1(4)(b) along with Rule 1(3), it is evident that when a suit is withdrawn seeking permission to file afresh, the permission so granted is “*permission to*



withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim”.

22. Furthermore, no specific text or wording is prescribed under the CPC for the court to grant ‘permission’ referred-to in Order XXIII Rule 1(4)(b) CPC; and it is also noticed that upon withdrawal of a suit, what Rule 1(4) CPC *precludes* (unless permission is granted by the court) is the institution of a *fresh suit* in respect of the subject matter of the earlier suit.
23. Therefore, Order XXIII Rule 1(3) CPC empowers the court to grant to a plaintiff permission to withdraw from a suit with liberty to institute a fresh suit; and without such permission, a plaintiff is precluded from instituting a ‘fresh suit’.
24. Upon a combined reading of the aforesaid provisions therefore, it is clear that what was granted to the appellants by way of order dated 09.05.2017, which order was worded in the widest terms, viz. - liberty to take appropriate proceedings - included the liberty to file a fresh suit, while also allowing the appellants to file any other proceedings as may be permissible, in accordance with law.
25. Accordingly, in the opinion of this court, the appellants were not debarred from filing the later suit by way of CS SCJ No.348/2018, from which the present second appeal arises. There is accordingly no basis to reject the present second appeal on that ground.
26. As a sequitur of the above, this court finds no merit in the present application, which is accordingly dismissed.



RSA 26/2024

27. Re-notify on 02nd March 2026.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 6, 2025

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