



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

% **Date of order: 8th August, 2023**

+ C.R.P. 34/2022 & CM APPL. 11989/2022 & CM APPL. 11990/2022
& CM APPL. 44771/2022

MR. MANISH GOEL Petitioner

Through: Mr. Tarkeshwar Nath, Mr. Lalit Mohan, Mr. Virat Saharan and Mr. Harshit Singh, Advocates

versus

MR. RAGHAV GOYAL & ANR. Respondents

Through: Mr. Shad Anwar and Ms. Shabnam, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition has been filed on behalf of the petitioner seeking the following reliefs:

“(I) Set aside the orders dated 04.08.2021 passed by the Ld. ADJ-02, Shahdara, Karkardooma, Delhi in CS No. 975/2016

(II) Reject the plaint

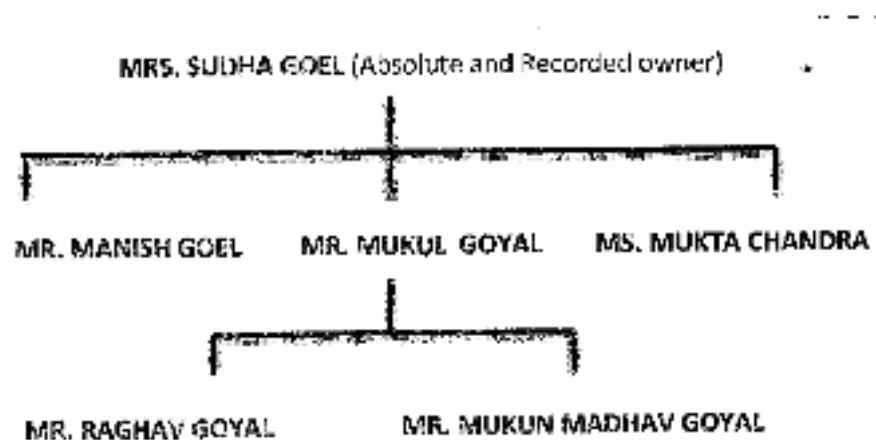
(III) Any other order or direction that this Hon’ble Court deems fit under present facts and circumstances in the interest of justice.”

2. The relevant facts leading to the present petition have been



reproduced herein:

- i) Late Smt. Sudha Goel W/o Late Sh. Ram Avtar Goel, is the recorded owner of the property bearing No. F-53, Naveen Shahdra, Delhi (hereinafter 'Suit Property'). She had expired on 26th April 2021.
- ii) The petitioner herein is one of the sons of Late Smt. Sudha Goel. The respondents herein are the sons of Mr. Mukul Goyal, and grandchildren of Late Smt. Sudha Goel. Late Smt. Mukta Chandra was the daughter of Late Smt. Sudha Goel. The family chart is mentioned below for reference:



- iii) Late Smt. Mukta Chandra allegedly executed an unattested Will dated 20th January 2015, in the favour of the respondents with respect to her share i.e. 1st Floor with terrace right of the said property.
- iv) On the basis of the alleged unstamped and unregistered family settlement dated 8th July 2010, and Will dated 20th January



2015, respondents/plaintiffs filed a Suit bearing No. CS-975/2016, seeking *inter alia* partition of the Suit Property.

- v) The petitioner/defendant filed his written statement raising objections on the ground that the said suit is liable to be dismissed because the Suit Property had already been gifted to the petitioner *vide* registered Gift Deed dated 25th June 2010, by the absolute owner of the Suit Property as per the records, namely Late Smt. Sudha Goel.
- vi) The respondents thereafter, filed their amended plaint seeking possession, declaration and injunction. In the amended plaint, the registered gift deed dated 25th June 2010, was challenged by the respondents.
- vii) The petitioner moved an application under Order VII Rule 11 of the Code of the Civil Procedure, 1908 (hereinafter 'CPC'), for rejection of the plaint on the ground that the suit is not maintainable being barred by law as the Will dated 20th January 2015, allegedly executed by Late Smt. Mukta Chandra, which is the basis of the suit was not duly executed as required under Section 63 of the Indian Succession Act, 1925 (hereinafter 'the Act').
- viii) The learned Trial Court dismissed the application of the petitioner under Order VII Rule 11 of the CPC *vide* order dated 4th August 2021, thereby holding that the application was not maintainable as the law does not permit the partial rejection of a



plaint.

ix) The petitioner is hence before this Court seeking revision of the impugned order.

3. Learned counsel appearing on behalf of the petitioner submitted that the present petition has been filed against the impugned order dated 4th August 2021, whereby, the application of the petitioner under Order VII Rule 11 of the CPC was wrongly dismissed by the learned Trial Court.

4. It is submitted that learned Trial Court had failed to appreciate that the respondents have no *locus standi* to file the suit as they have no right over the Suit Property. It is also submitted that the learned Court below wrongly passed the impugned order while ignoring the fact that the Will dated 20th January 2015, is itself an invalid document, and hence, the respondents being strangers to the Suit Property do not have any interest thereto.

5. It is submitted that Late Smt. Mukta Chandra was neither the owner nor was in possession of the Suit Property. Therefore, the respondents have no legal right which can be said to have been accrued in their favour through the alleged Family Settlement dated 8th July 2010, or through any other documents. The said settlement deed is a nullity in the eyes of law since the same is insufficiently stamped and is an unregistered document.

6. It is further submitted that the respondents have no *locus standi* to challenge the Gift Deed dated 25th June 2010, as the same is a valid and registered gift deed, executed in the petitioner's favour by his mother, namely Late Smt. Sudha Goel, who as per the records is the absolute owner of the Suit Property.



7. It is further submitted that the learned Court below had failed to consider that the respondents have no right or interest over the Suit Property due to which there is no cause of action that arises in their favour and thus, the whole plaint is liable to be rejected.

8. It is submitted that learned Trial Court had failed to consider the fact that nowhere in the plaint, the respondents have described the cause of action with regard to the Gift Deed which is under challenge, rather the respondents have taken the cause of action with regard to the Will which was executed by Late Smt. Mukta Chandra. Hence, the plaint is liable on be rejected on this ground.

9. It is submitted that learned Trial Court ought to have appreciated that none of the reliefs as sought by the respondent can be granted if it would have taken into account the averments in the plaint on the face of it and considering the unattested Will as the basis of the suit.

10. It is further submitted that the Will dated 20th January 2015, which is the basis of the suit has not been duly executed as required under Section 63 of the Act. As per the said provision, the condition that the Will has to be attested by witnesses is a statutory requirement and the same cannot be avoided.

11. It is submitted that learned Trial Court has wrongly passed the impugned order without appreciating that proceeding with the trial, under the said circumstances, will be an exercise in futility.

12. In view of the foregoing paragraphs, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs



sought may be granted thereby, setting aside the order dated 4th August 2021, passed by the learned ADJ-02, Shahdara, Karkardooma Court, Delhi in Civil Suit bearing No. 975/2016.

13. *Per contra*, learned counsel appearing on behalf of the respondents/plaintiff vehemently opposed the averments made by the petitioner and submitted that the present petition has been filed with the sole purpose of harassing the respondents. The present petition is nothing but an abuse of the process of law.

14. It is submitted that on 8th July 2010, a Family Settlement deed was executed between the legal heirs of Late Sh. Ram Avtar Goel, father of the petitioner, for partition of the Suit Property along-with other properties of Late Sh. Ram Avtar Goel. The petitioner as well as the other legal heirs have signed the Family Settlement deed. Pursuant thereto, a relinquishment deed dated 9th July 2010 was also executed by all the legal heirs.

15. It is further submitted that Late Sh. Ram Avtar Goel was the absolute owner of the Suit Property as per the records which is evident from the registered General Power of Attorney (hereinafter 'GPA') dated 14th March 1974. Late Sh. Ram Avtar Goel transferred the said property to Sh. Umesh Kumar (brother of Late Smt. Sudha Goel) *vide* another GPA dated 23rd March 1992. Further, the Suit Property was transferred in the favour of Late Smt. Sudha Goel by Sh. Umesh Kumar *vide* GPA and Agreement to Sell dated 23rd March 1992. Since, no registered title documents exist in favour of Late Smt. Sudha Goel, therefore, the alleged Gift Deed dated 25th June 2010, executed by Late Smt. Sudha Goel in favour of the petitioner is illegal



and not enforceable.

16. It is submitted that the Gift Deed dated 25th June 2010, executed by Late Smt. Sudha Goel is under challenge in the Civil Suit bearing No. 975/2016, which is pending before the learned Trial Court on the ground that after the execution of the said Gift Deed, Late Smt. Sudha Goel executed a Family Settlement Deed, whereby, the Suit Property was partitioned among her legal heirs.

17. It is also submitted that by virtue of the Family Settlement deed dated 8th July 2010, Late Smt. Mukta Chandra was the rightful owner of the first floor and terrace right of the Suit Property and hence, the Will dated 20th January 2010, is valid. Further, the same is a valid and legally enforceable document because it is a settled position of law that even oral and unattested wills are legally valid, and neither registration nor attestation is mandatory. The parents of the respondents are witnesses to the Will in question as the same was handed over to them by Late Smt. Mukta Chandra.

18. It is submitted that respondents herein have legal rights over the first floor of the Suit Property along with the terrace right, whereas the petitioner's right is restricted only to the ground floor of the Suit Property, and the same is evident from the Family Settlement deed dated 8th July 2010.

19. Hence, in view of the foregoing submissions, the respondents seek that this Court be pleased to dismiss this petition thereby upholding the impugned order dated 4th August 2021, passed by the learned ADJ-02, Shahadra, Karkardooma, Delhi in Civil Suit No. 975/2016.

20. Heard learned counsel for the parties and perused the material on



record including the pleadings, and judicial precedents cited.

21. Keeping in view the arguments advanced by the parties, the following issue has been framed for adjudication by this Court:

Whether the learned Trial Court was in error while passing the impugned order, thereby, rejecting the application of the petitioner under Order VII Rule 11 of the CPC on the ground that partial rejection of a plaint is not permissible?

22. In order to appreciate the issues involved in this petition, it is pertinent to set out the relevant facts here.

23. At the outset, it is necessary to state that present petition initially filed under Article 227 of the Constitution of India was converted into Civil Revision Petition under Section 115 of the CPC *vide* order dated 9th March 2022, by the Predecessor Bench of this Court. It was renumbered as Civil Revision Petition at the request of the learned counsel of the petitioner.

24. The respondents had filed a Civil Suit bearing No. 975/2016, before the learned Trial Court seeking partition in the Suit Property against the petitioner on the basis of a Will dated 25th January 2015. The petitioner filed his written statement wherein it was contended to the effect that the respondents do not have any cause of action due to the Gift Deed dated 25th June 2010, which was executed by Late Smt. Sudha Goel in favour of the petitioner.

25. Thereafter, the respondents sought an amendment of the plaint which was allowed by the learned Trial Court *vide* order dated 6th October 2016. The respondents in their amended plaint had challenged the Gift Deed dated



25th June 2010, which is relied upon by the petitioner in his written statement. In the said amended plaint, the respondents sought *inter alia* the following reliefs:

“a. Pass a decree of possession of entire first floor with terrace right of property bearing no. F-53 Naveen Shahdara Delhi-32 and deliver the possession of first floor with terrace right in favour of the plaintiffs and against the defendants as specifically shown in the site plan.

aa. Pass a decree of declaration in favour of the plaintiffs and against the defendants and thereby to declare that the alleged ‘Gift-deed’ dt. 25-06-2015, executed by the defendant no. 1 in favour of the defendant no. 2, in respect of the suit house is null and void and has got no any legal effect, in the interest of justice.

c. Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants and thereby restrain defendants from dispossessing, selling the suit property and the defendants any kindly be further restrained to peaceful enjoyment of suit property as given in the site plan in the interest of justice.”

26. The petitioner had filed an application under Order VII Rule 11 of the CPC before the learned Trial Court in Civil Suit bearing No. 975/2016, thereby, seeking rejection of the plaint on the ground that since the Will dated 25th January 2015, is invalid in the eyes of law, hence there is no cause of action that lies in favour of the respondents to proceed with the Trial.

27. The petitioner had further contended that the Will dated 25th January 2015, is not executed as per the mandate of Section 63 of the Act which requires the Will being executed is to be, firstly, signed by the testator, secondly, the sign of the testator is to be placed in such manner that it gives



effect to the will, thirdly, the will should be attested by two or more witnesses, and fourthly, each of the witnesses must have seen the testator signing and each of them should sign the will in the presence of the testator.

28. It is contended by the petitioner that since the Will dated 25th January 2015, is invalid because the same does not carry attestation in terms of Section 63 of the Act, the plaint is liable to be rejected.

29. Aggrieved by the dismissal of application under Order VII Rule 11 of the CPC by the learned Court *vide* order dated 4th August 2021, the petitioner has approached this Court under the revisional jurisdiction, challenging the impugned order.

30. The relevant paragraphs of the impugned order are reproduced herein for reference:

“Ld. counsel for the plaintiffs submits that he has filed reply to the application under Order VII Rule 11 CPC through official email ID of Reader of this Court. Let hard copy of the same be filed on record. On the said application, Ld. Counsel for the defendant no. 2 submits that plaint is liable to be rejected as the Will is not attested by any witness. In this regard, suffice it to state that the plaintiffs have filed the present suit by not only claiming themselves as beneficiary of Will dated 20.01.2015 but also sought relief of declaration to declare that alleged Gift Deed dated 25.06.2015 executed by defendant no.1 in favour of defendant no.2 in respect of suit property is null and void. As per settled law, part rejection of the plaint is not permissible. Thus, application under order 7 Rule 11 CPC is not maintainable and is hereby disposed of. Needless to say, defendant no.2 is at liberty to raise the aforesaid legal plea in accordance with law.”



31. The learned Trial Court while dismissing the application of the petitioner under Order VII Rule 11 of the CPC held that the petitioner is seeking rejection of the plaint on the basis of the invalidity of the Will dated 25th January 2015, executed by Late Smt. Mukta Chandra in favour of the respondents. The learned Trial Court further held that the application under Order VII Rule 11 of the CPC is not maintainable since there can be no partial rejection of the plaint i.e., it has to be completely accepted or rejected. The Court below held the same due to the reason that the respondents had filed the suit not only claiming themselves as beneficiaries of the Will dated 25th January 2015, but also sought relief of declaration to declare the Gift Deed dated 25th June 2010 as null and void.

32. At this stage, it is imperative to understand the relevant provisions of law to adjudicate upon the issue framed hereinabove. Order VII Rule 11 of the CPC, which reads as follows:

“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 written 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;*



(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers 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 for correcting the valuation or supplying the requisite stamp papers, 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.”

33. The provision under Order VII Rule 11 of the CPC provides for rejection of a plaint. The scope of judicial inquiry in an application under Order VII Rule 11 of the CPC is very limited to examining the statement in the plaint. Under Order VII Rule 11 of the CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of its powers under Order VII Rule 11 of the CPC would be on consideration of the principles laid down by the said provision and by the Hon'ble Supreme Court.

34. In *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, the Hon'ble Supreme Court enunciated on the aspect of rejection of the plaint and observed that if on a meaningful, not formal reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear



right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC to adjudicate upon the grounds mentioned therein.

35. In light of the instant facts that the learned Trial Court's dismissal was on the ground of non-maintainability of the rejection application, it is necessary to embark upon the principle of partial and whole rejection of a plaint. What is important to remember is that the concerned provision refers to the 'plaint' which necessarily means the plaint as a whole. It is a settled law that the plaint as a whole can be rejected under Order VII Rule 11 of the CPC. There is no provision in the CPC for the rejection of a plaint in part. Further, as per Mulla's Civil Procedure Code, the rule for rejection of the plaint only states the rejection of the plaint as a whole and it cannot be rejected partially.

36. It is only where the plaint as a whole does not disclose a cause of action, that Order VII Rule 11 of the CPC interdicts a suit from proceeding. In ***Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510***, which was recently reaffirmed in ***Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corpn., 2022 SCC OnLine SC 641***, the Hon'ble Supreme Court has culled out the legal ambit of Order VII Rule 11 of the CPC and held as under:

"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.”

37. In the light of aforementioned judgment, the Hon’ble Supreme Court had reiterated its stand with regard to the partial and whole rejection of a plaint. It held that the law specifies that a plaint is an important part of the pleadings in a suit. The contents of a plaint not only define the facts and affected legal right of a party but also define the cause of action which is a crucial factor in a trial as it creates the *locus standi* of the parties thereto. It is inferred that if a Court exercises its power, thereby, rejecting a plaint in part, it will have serious and unwarranted effect on the trial as there could be gross injustice to the party/parties. A plaint consists the description of various facts and circumstances along with the legal rights of a party in it. In the event a plaint is read in part or in compartments, the contents thereto will have different meaning altogether in regard to the context and purpose for which the suit was filed. Therefore, the intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole and not in part.

38. On perusal of the rule, it is inferred that if any of the defects mentioned in the provision is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of



rejection of the plaint in part. In ***Roop Lal Sathi v. Nachhattar Singh Gill***, (1982) 3 SCC 487, it was held by the Hon'ble Supreme Court that where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order VII Rule 11 of the CPC, but the rule does not justify the rejection of any particular portion of a plaint.

39. The above discussed principle has also been discussed in ***Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.***, (2018) 11 SCC 780, wherein, the Hon'ble Supreme Court held as under:

“4. It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11. In Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] , the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms : (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

“4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code.”

5. Similarly, in Bansi Lal v. Som Parkash [Bansi Lal v. Som Parkash, AIR 1952 Punj 38] , the High Court held : (AIR p. 39, para 7)

“7. But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has relied on a statement of the law given in Mulla's Civil Procedure Code at p. 612 where it is stated: “This rule (Order VII Rule 11) does not justify the rejection of any particular



portion of a plaint.” In support of this statement the learned author has relied on Raghubans Puri v. Jyotis Swarupa [Raghubans Puri v. Jyotis Swarupa, ILR (1906-07) 29 All 325] , Venkata Rangiah Appa Rao v. Secy. of State [Venkata Rangiah Appa Rao v. Secy. of State, 1930 SCC OnLine Mad 123 : ILR 54 Mad 416 : AIR 1931 Mad 175] and Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] In reply to this argument Mr Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part. I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly.””

40. Furthermore, the Hon’ble Supreme Court in a recent judgment of **Madhav Prasad Aggarwal v. Axis Bank Ltd., (2019) 7 SCC 158**, has discussed and reiterated the principle of rejection, in terms of partial rejection and rejection of the plaint as a whole. It was held by the Hon’ble Court that under Order VII Rule 11 of the CPC, the power is limited to rejection of the plaint as a whole or not at all. The relevant paragraph is



reproduced below:

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order VII Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order VII CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

41. It is an established principle of law that when a Court considers a plaint liable to be rejected in respect of a part, it is incumbent on the Court to reject the plaint as a whole. The said Court has no jurisdiction to reject the plaint in part and permit the suit to be continued with regard to the rest. The same has been laid down in a catena of judgments, some of which are mentioned hereinabove.

42. In view of the present facts, the learned Trial Court has rightly considered the issues and dealt with the same as per the settled law. It is evident from the plain reading of the amended plaint that various reliefs are being sought therein by the respondents. The reliefs sought by the



respondents include possession of the property on the basis of the Will dated 25th January 2015, and challenge to the Gift Deed dated 25th June 2010. The petitioner's application under Order VII Rule 11 of the CPC was only on the ground that the said Will is invalid due to the absence of mandatory requirements as per Section 63 of the Act and hence, there is no cause of action for the suit which accrued in favour of the respondents. The learned Court below has rightly considered that in case the contentions of the petitioner are accepted for rejection of the plaint on the basis of invalidity of the Will, the trial may still be proceeded further with regards to the other reliefs sought therein, and such partial rejection is not permissible in law. The contentions and grounds raised before the learned Trial Court by the parties have been rightly dealt with by the learned Trial Court.

43. The learned Trial Court has taken into account the necessary facts and circumstances, and rightly concluded that since the petitioner only sought rejection of the plaint on the ground of invalidity of the Will, the same is not maintainable as it would amount to partial rejection of the plaint which is against the rules of the pleading and perverse under the law.

44. At this juncture, this Court deems it appropriate to discuss the scope of revisional powers of High Court. The Hon'ble Supreme Court has detailed the scope of such powers of High Court under Section 115 of the CPC, in the matter of ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807***, wherein it was observed as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not



competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

The above position was recently reaffirmed in the judgment of ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8***



SCC 633, by the Hon'ble Supreme Court.

45. Furthermore, as per the judgment of the Hon'ble Supreme Court in *Baldevdas Shivilal v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201*, the scope of Section 115 of the CPC includes only the jurisdiction, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the Trial Court is erroneous due to a question of fact or of law does not amount to illegality or material irregularity. It embarks a peculiar kind of restraint that needs to be followed in its true letter and spirit. The High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable but may interfere if the Court below has exercised its jurisdiction illegally or there is found to be material irregularity in the exercise of jurisdiction by the Trial Court.

46. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

47. This Court is of the view that no case of revision as defined under Section 115 of the CPC has been made out by the petitioners as no such cause exists wherein the learned Trial Court has failed to exercise its jurisdiction as per law. The learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity.



48. Accordingly, the issue framed has been decided.
49. On perusal of the findings of the learned Trial Court, this Court is of the view that there is nothing in the impugned order which suggests that there is any error of jurisdiction or any other error or irregularity which goes to the root of the matter and invites the intervention of this Court while exercising its revisional powers.
50. This Court discerns no material to establish the propositions put forth by the petitioner. There is no material to characterise that the learned Trial Court exercised its jurisdiction illegally or irregularly while passing the impugned order.
51. In view of the above discussion of facts and law, this Court finds no error in the impugned order dated 4th August 2021 passed by the learned ADJ-02, Shahadra, Karkardooma, Delhi in Civil Suit No. 309/2015.
52. Based on the aforementioned discussion, this revision petition is accordingly dismissed.
53. Pending applications, if any, also stand dismissed.
54. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 8, 2023
gs/ryp

Click here to check corrigendum, if any