



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

% **Date of order: 16th October, 2024**

+ **C.R.P. 154/2024 & CM APPL. 29036/2024**

RAMESH KUMAR YADAV & ORS.

.....Petitioners

Through: Mr. Pawan Bindra Sr. Advocate with Mr.
Manish Gandhi, Mr. Rohit Goel, and Ms.
Pratishtha Singh, Advocates for the
petitioners

versus

MANAN YADAV

.....Respondent

Through: Mr. Vinay Kumar Garg, Sr. Advocate with
Mr. Ankur Yadav, and Mr. Karandeep
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ("CPC" hereinafter) has been filed on behalf of the petitioners seeking setting aside of the order dated 25th January, 2024, ('impugned order' hereinafter), passed by the learned Civil Judge- N/W District, Rohini Courts, Delhi in CS SCJ no.1318/2019.

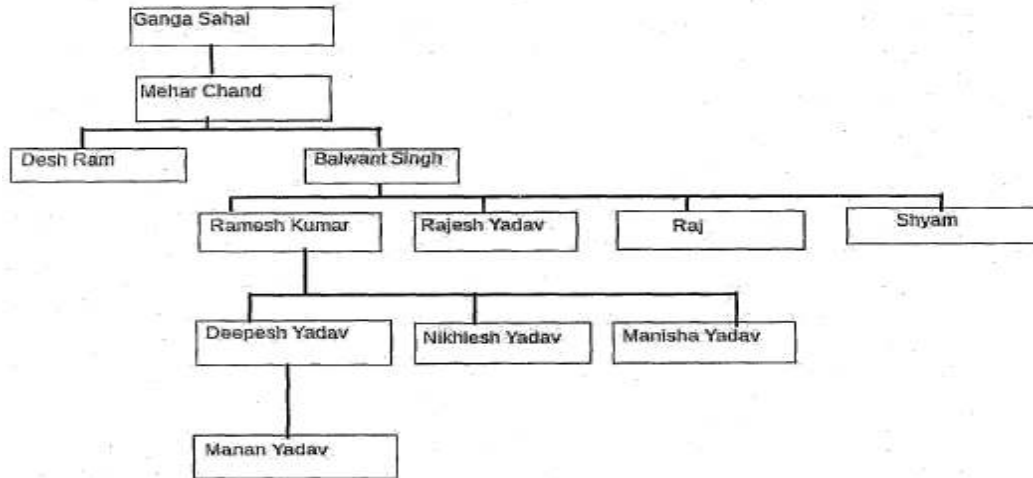
2. The brief facts that led to the filing of the instant revision petition are as follow:

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- a. The family chart defining the relation among the parties is as under:



- b. The minor respondent herein/plaintiff, through his mother, filed the aforesaid civil suit for declaration against all the petitioners/defendants seeking declaration of the suit properties as Joint Hindu Undivided Coparcenary Ancestral family properties with further declaring the plaintiff as a coparcener-cp-owner in the said suit properties. Vide the said suit, it has also been prayed that a decree of declaration be passed against the defendants/petitioners herein, thereby, declaring the agreement to sell dated 9th January, 1987 and conveyance deed dated 12th May, 2000 as null and void. The details of the suit property as per the record are as follows:



S.No.	Property Details	Details
1	HU 79 (PLOT PITAMPURA)250 yards sq Para No.9 of the suit i.e. suit property No.1 shown in site plan No.1.	 Suit property No.1
2	HU 80 (PLOT PITAMPURA) 250 sq yards Para No.11 of the suit i.e. suit property No.2 shown in site plan No.2	 Suit property No.2
3	Plot No. 71 measuring 153 Sq.meter Para No.12 of the suit i.e. suit property No.3 shown in photograph No.3	 Suit property No.3
4	Plot No.81, HU-Block Para No.13 of the suit i.e. suit property No.4 shown in photograph No.4	 Suit property No.4
5	GODOWN BHALASWA 1000 SQ YARDS Para No.14 of the suit i.e. suit property No.5 shown in site plan No.5	 Suit property No.5
6	GODOWN BHALASWA 1100 SQ YARDS 300 SQ YARDS 200 SQ YARDS Para No.14 of the suit i.e. suit property No.6 shown in site plan No.6	 Suit property No.6
7	SARAI PEEPAL THALA100 SQ YARDS Para No.15 of the suit i.e. suit property No.7 shown in photograph	 Suit property No.7
8	QUADIPUR VILLAGE4 ACRE Para No.16of the suit	 Suit property No.8
9	BHALASWA JAHANGIRPUR Para No.17 of the suit	 Suit property No.9

- c. In the aforesaid civil suit, the petitioners herein filed applications for rejection of the plaint under Order VII Rule 11 of the CPC. The learned Trial Court dismissed the said application *vide* order dated 25th January, 2024.
- d. Being aggrieved by the same, the petitioners have filed the present revision petition seeking setting aside of the same.



3. Mr. Pawan Bindra, learned senior counsel appearing on behalf of the petitioners submitted that the learned Trial Court failed to appreciate the arguments and contentions made in the application filed under Order VII Rule 11 of the CPC while passing the impugned order, and thus, the same is liable to be set aside.

4. It is submitted that the learned Trial Court erred by not appreciating that the estate of the petitioners stood apportioned, divided and devolved upon the respective coparceners and thus, the estate *ipso-facto* changed the alleged character from ancestral/Hindu Undivided Family property to personal and self-owned property of the coparceners due to which the plaint of the respondent is liable to be rejected under Order VII Rule 11 of the CPC and the same is apparent from the bare reading of paragraph no. 6 of the plaint where the respondent has categorically stated that the properties were inherited and represented by the sons in equal share.

5. It is submitted that the learned Trial Court also failed to appreciate that the respondent had not substantiated the allegations regarding the suit properties being ancestral/Hindu Undivided Family with any material evidence and thus, the plaint is vexatious.

6. It is submitted that the learned Trial Court further failed to take into consideration the fact that plaint suffers from non-joinder of necessary parties and thus, the same is bad in law as the allegations made in the said plaint is that the suit properties are ancestral properties, and therefore, other coparceners were mandatorily required to be impleaded.



7. It is further submitted that the learned Trial Court erred in holding that the estate was put in common hotchpotch prior to the year 1956, though there is no material on record to buttress the same, thereby, barring the only self-serving statement of the respondent in its plaint. The learned Trial court further erred in holding that the non-joinder of the necessary party is not covered by the provision of Order VII Rule 11 of the CPC, which is perverse and baseless and the provision of Order 1 Rule 9 of the CPC specifically bars a suit bad for non-joinder of necessary party.

8. It is submitted that the learned Trial Court erred in not appreciating that the plaint is barred by the law and erroneously held that the respondent is seeking the declaratory decree and praying for consequential relief, hence the court fee paid by the respondent is in accordance with the provision of Section 7 (iv) (c) of the Court Fees Act, 1987. It is further submitted that the learned Trial Court failed to decide the objection of court fee and its jurisdiction before proceeding with the suit.

9. Therefore, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

10. *Per Contra*, Mr. Vinay Kumar Garg, the learned senior counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the learned Trial Court has rightly adjudicated the application under Order VII Rule 11 of the CPC and there is no illegality of any kind thereto.



11. It is submitted that the impugned order was passed after thorough consideration of the facts and circumstances of the case and no illegality or irregularity arises out of the impugned order, therefore, the instant petition is liable to be dismissed being bereft of any merit.

12. It is further submitted that the respondent has made sufficient averments in the plaint regarding the existence of a coparcenary, thereby disclosing a cause of action to institute the suit against the petitioners herein. Further, the learned Trial Court has rightly observed that upon perusal of paragraphs no. 3, 9, 20, and 27 of the plaint, the cause of action can be determined and that the existence or non-existence of the Hindu Undivided Family is a matter to be determined at the stage of trial.

13. Therefore, in view of the foregoing submissions, it is prayed on behalf of the respondent that the instant petition may be dismissed being devoid of any merits.

14. Heard the learned counsel for the parties and perused the material placed on record.

15. It is the case of the petitioners that their application under Order VII Rule 11 of the CPC was wrongly dismissed by the learned Trial Court as it failed to consider that the estate which is the subject matter of the suit had already been divided, which further changes the character of the property from ancestral to personal and thus, the plaint is liable to be rejected due to lack of cause of action. Additionally, the issue of non-joinder of necessary parties, as required by law, was overlooked by the learned Trial Court while



deciding the petitioners' application. The petitioners also submitted that the issue of Court fee and jurisdiction were not properly addressed by the learned Trial Court which makes the impugned order liable to be set aside as there are illegalities therein.

16. In rival submissions, the respondent contented that the learned Trial Court rightly rejected the petitioners' application under Order VII Rule 11 of the CPC, as the issues raised therein are triable in nature and cannot be summarily dismissed. It has been contended that sufficient averments were made in the plaint regarding the existence of a coparcenary, which discloses a valid cause of action to institute the aforesaid civil suit against the petitioners. Moreover, the existence of the ancestral property and the Hindu Undivided Family status are matters to be determined at trial which has been rightly observed by the learned Trial Court.

17. In view of the foregoing submissions, the limited question for adjudication before this Court is whether the learned Trial Court erred in passing the impugned order by dismissing the application filed under Order VII Rule 11 of the CPC.

18. At this juncture, this Court deems it apposite to reproduce the relevant extracts of the impugned order wherein the learned Trial Court dismissed the aforesaid application. The relevant extracts of the impugned order are as follows:-

“7. In light of the abovesaid principles, coming back to the facts of the present case, it is important to observe that the present stage of adjudication of applications under Order 7 Rule 11



CPC. For the purposes of Order 7 Rule 11 (a), the Court has to only look for 'disclosure' of a cause of action and not for the scope of its proof. In the present case, the plaintiff has made sufficient averments in the pleadings as regards the existence of coparcenery thus disclosing a cause of action. The said averments can be found throughout the plaint and more specifically in Para no 3,9,20 & 27 of the plaint. The existence or non existence of the HUF is a matter of trial. Whether the suit properties were or were not purchased from the compensation amount received upon acquisition of ancestral properties and whether the coparcenery continued to exist after 1956 can only be decided after evidences are led upon the same. At this stage, we are not concerned with the correctness of the averments, except to state that the Plaintiffs have the carriage of the proceedings, and have to discharge the burden of proving their case. In so far as the application under Order 7 Rule 11 is concerned, the Court has to proceed only that far, to examine whether the plaint discloses a cause of action, and no further. In the present case, as already stated, the plaintiff has made sufficient averments in the pleadings as regards the continuation and existence of coparcenery thus disclosing a cause of action.

7.1 The defendants have stated only in a routine manner that the suit is barred by Delhi Land Reforms Act and Delhi Land Revenue Act and have failed to state as to how the said bar of law applies to the present case. Any such contention can be only dealt with once evidences are led upon the same and therefore cannot be looked into at this of adjudication of applications under Order 7 Rule 11.

7.2 As the suit is premised on the alleged existence of coparcenery and specific averments have been made by the plaintiff that the suit properties were ancestral properties, the



contention of the defendants that the suit is bad for misjoinder of cause of action is without any merit.

*7.3. It is also the contention of the defendants that the suit is barred for misjoinder of defendant no 4 & 5 as no cause of action has been alleged against them. Here it is important to observe the settled principle of law that the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. The relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). Reliance in this regard can be placed upon the judgment of Honble Supreme Court of India in **Madhav Prasad Aggarwal v. Axis Bank Ltd (2019) 7 SCC 158**. It is also the contention of the defendants that the suit is liable to be dismissed on the ground of non-joinder of other coparceners as they are necessary parties in the present suit however, it is noteworthy that the ground taken, namely, non-joinder of necessary party is not covered by any of the Clauses (a) to (d) of Rule 11 of Order VII CPC. This is a matter which will have to be considered at the appropriate stage after framing of issues including the issue on this aspect. After framing of issues, this particular issue can be treated as 'preliminary issue' and if no evidence is required, it can be listed for arguments. Even if it is ultimately held that the party alleged to be a necessary party is found to be one, the suit may not necessarily be dismissed without giving an opportunity to the Plaintiff to amend the plaint by adding the absent party. Reliance in this regard can be placed upon the judgment of **Hon'ble High court of Delhi in SILVERMAPLE HEALTHCARE SERVICES PRIVATE LIMITED Versus DR. TAJINDER BHATTI (2022/DHC/004573)**.*

7.4 It is also the contention of the defendants that the plaintiff has failed to value the suit properly for the purposes of Court fee and jurisdiction. As regards the said contention, S. 7 (iv) (c)



states that where the suit is to obtain a declaratory decree where consequential relief is prayed for, then the amount of fee payable under the Court fees Act, 1870 shall be according to the amount at which the relief sought is valued in the plaint and in all such suits, the plaintiff shall state the amount at which he values the relief sought. The same has been done by the plaintiff, more specifically, in para no 37 of the plaint. Thus, the contention of the defendants as regards valuation and court fees does not merit at this stage.

7.5 To summarise, the grounds taken by the defendants in their applications under Order 7 Rule 11 do not find any merit and accordingly the applications under Order 7 Rule 11 are dismissed and disposed off.”

19. Upon perusal of the relevant portions of the impugned order it is made out that the learned Trial Court dismissed the application under Order VII Rule 11 of the CPC by observing that the respondent/plaintiff had sufficiently disclosed a cause of action in the pleadings concerning the existence of coparcenary. The learned Trial Court emphasized that the correctness of the averments and determination of existence of a Hindu Undivided Family are matters to be adjudicated at the stage of trial and cannot be resolved at the stage of deciding an application under Order VII Rule 11 of the CPC. Furthermore, the petitioners’/defendants’ contentions regarding the suit having been barred under the Delhi Land Reforms Act, 1954 and also due to the non-joinder of necessary parties were found to be premature, as these issues require further evidence and examination and cannot be determined at the stage of deciding the said application. It was held by the learned Trial Court that the issue of non-joinder of necessary



parties is not a ground under Order VII Rule 11 of the CPC, and the same may be considered after the framing of issues as a 'preliminary issue'. Similarly, the objections related to the valuation of the suit and court fees were dismissed, as the respondent had appropriately valued the relief in accordance with Section 7(iv)(c) of the Court Fees Act, 1870. Therefore, the Court found no merit in the application filed under Order VII Rule 11 of the CPC, and thus, the same was dismissed.

20. Before delving into the merits of the instant petition, this Court deems it necessary to consider the settled principles of law with respect to the provisions of Order VII Rule 11 of the CPC.

21. The Hon'ble Supreme Court in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, has held that if on a meaningful and informal reading of the plaint, the averments are 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.

22. It is a settled law that in an application under Order VII Rule 11 of the CPC, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments in the plaint. Order VII Rule 11 of the CPC established a remedy that is made available to the defendant to challenge the maintainability of the suit itself, irrespective of the defendant's right to contest the suit on merits. It is also relevant to note here that as per the judgment of the Hon'ble Supreme Court in *Kamala v. K.T. Eshwara Sa*, (2008) 12 SCC 661, in the event an application under Order VII Rule 11 of



the CPC is made, the Court will have limited power with regards to evidence submitted by the parties therein. Further, any issue that may arise on merits is beyond the jurisdiction of the Court in such an application.

23. Pertinently, in *Avtar Singh Narula v. Dharambir Sahni*, 2008 SCC OnLine Del 680, the Hon'ble Supreme Court observed that the issues that are brought before the Court cannot be decided in an application filed under Order VII Rule 11 of the CPC, wherein, the evidence of the parties is required to be analyzed or it constitute issues that are triable in nature. It has also been established that where there is a valid reason for filing the suit and the issues involved are those that require evidence of the parties, there is no ground made out for the High Court to interfere with the findings of the subordinate Courts.

24. With regard to the issue of existence of cause of action, the aforementioned judgments make it clear that while deciding an application under Order VII Rule 11 of the CPC, the Courts shall peruse the entire plaint and decide whether a cause of action arises in the said suit, and when the same does not reflect a cause of action then the suit is liable to be dismissed under the aforesaid provision, however, if upon a plain reading of the plaint, it can be *prima facie* made out that there exists a cause of action in favour of the plaintiff, then the Courts must proceed with the adjudication of the suit and not to reject the plaint under the Order VII Rule 11 of the CPC.

25. It is observed from the abovementioned *judicial dicta* that while deciding an application under Order VII Rule 11 of the CPC, the plaint has



to be read as a whole, i.e., in totality and part reading of the plaint is not the settled position of law.

26. Now adverting to the merits of the instant petition.

27. The petitioners have contended that the learned Trial Court failed to appreciate that there does not exist any cause of action in favour of the respondent to institute the aforesaid civil suit against the petitioners herein. It has also been contended that the plaint is devoid of any merits and the same raises vexatious claims, as the respondent has failed to furnish any documentary evidence establishing the nature of the property as ancestral and not self-acquired.

28. For the purpose of adjudication of the instant revision petition, this Court shall now peruse the averments made in the plaint. The relevant portions of the same are as follows:

“ Para 3: That the defendant No.1 is the father of the plaintiff, the defendant No.2 is the grandfather of the plaintiff, the defendant No.3 is the grandmother of the plaintiff, defendant No.4 is, the uncle (Chacha) of the plaintiff and the defendant No.5 is the aunt (Bua) of the plaintiff and the defendants with the plaintiff thus constitute a Hindu undivided family thereby holding the properties i.e. movable and immovable properties from the period of their ancestors in which the plaintiff is a coparcener, co- owner/co-bhumidhar/cosharer and all the Joint Hindu undivided coparcenary ancestral properties including the suit properties which are thus coparcenary properties. The name of the ancestors whose properties/ estate has been represented in the family since from generations i.e. great great great grandfather of the plaintiff namely Ganga Sahai, who was represented by Sh. Mehar Chand, great great great



grandfather of the plaintiff, and thereafter, the properties/estate of Mehar' Chand S/o Sh.Ganga Saha'i was inherited on 21.02.1943 by his two sons' namely Desh Ram and Balwant Singh as said Mehar • Chand had died on 01.01.1943 and accordingly mutation in this context was recorded in the records of rights over the properties situated in Village Bhalswa Jahangirpur, Delhi State, Delhi and the said immovable properties being the Joint Hindu undivided coparcenary ancestral properties were received in equal shares as coparceners by Balwant Singh and Desh'Ram by inheriting the same as detailed above and hence, Balwant Singh after the death of his father Mehar Chand became the Karta of the Joint Hindu Undivided Family.

*Para 9 : That the said allotted residential Plot No.79 in Block No.HU in the lay out plan of Pitampura Residential Scheme, Delhi which was bounded as North-Road-18M, East-Plot No.80, South-Service Lane West-Service Lane which was later on constructed with the amount of compensation as received by Karta of the Joint family of the, plaintiff namely Balwant Singh from the acquisition of Joint Hindu undivided coparcenary ancestral properties (**hereinafter called the suit property No.1, and more specifically shown in red colour in the site plan Nod annexed with the plaint**) and the plaintiff is residing with his mother in the said suit property since his birth arid the said house being the suit property is also the share household property as well as matrimonial house of the mother of the plaintiff and the plaintiff who is having- lawful legal, valuable coparcenary right in the said suit property No.1 since his birth as the said suit property No.1is the Joint Hindu undivided coparcenary ancestral properties in the hands of the plaintiff being governed by Hindu Mitakshara Law (Old Hindu Law) and the suit property No. 1 being allotted as a alternative plot*



in lieu of the acquisition of Joint Hindu undivided coparcenary ancestral properties as detailed above is thus Joint Hindu undivided coparcenary ancestral properties in the hands of the plaintiff being male descendant of late Sh.Balwant Singh arid being male descendant of defendant No.2 and thus the plaintiff comes in the ambit of male descendant upto to three degree below defendant No.2 and the nature of the -.suit property No.1remains as Joint Hindu undivided coparcenary ancestral properties after the death of Balwant Singh on 06.03.1987, as he remained Karta of the Joint Family, as Balwant Singh in whom succession was opened on 01.01.1943 on the death of Sh.Mehar Chand, the nature of the Joint ; Hindu undivided coparcenary ancestral properties inherited by Balwant Singh being the son of Mehar Chand was Joint Hindu undivided coparcenary ancestral properties.in nature even the part land so inherited by Balwant Singh has been acquired and thus the compensation so received is a compensation of Joint Hindu undivided coparcenary ancestral properties of which Balwant Singh remained as Karta of the Joint family till his death and further the suit property being allotted as a alternative plot in lieu of acquisition of Joint Hindu undivided coparcenary ancestral properties is thus a coparcenary property in which the plaintiff became a coparcener having .his undivided, un-partitioned share which cannot be usurp, grab, or snatched in any manner and whatever documents as dishonestly by playing fraud and. deception with ulterior; motive and designs by the defendants in a clandestine manner by conspiring and connived with each other by designing a forged and fabricated GPA and agreement to sell dated 09.01.1987 being manufactured, created immediately before the death of Balwant Singh who expired on 06.03.1987, are thus sham and fictitious documents which are nullity and non est in the eyes of law thereby do not convey any right, title or interest of any kind , and nature in favour of the defendant No.3 qua the suit property as claimed by the defendant No.3.



Para 20: That none of the properties/land as detailed above are the self acquired property of the defendants and defendant No.2 so have derived and inherited from the ancestors of the plaintiff who are forefathers and ancestors of / defendant No.1, 2, 4 and 5 and prior to the commencement of Delhi Land Reforms Act, 1954, the name of the great grandfather of the plaintiff namely Balwant Singh was recorded in the records of rights only on account of he being the immediate head of the joint family/a unit consisting of family members for the sake of name in the records of rights having no exclusive right, title or interest in the abovesaid properties being the Joint Hindu undivided coparcenary ancestral properties of the family wherein every members .who had taken birth in the said family' have coparcenary rights therein. As a matter of fact being undeniable as the plaintiffs being the part and parcel of the family of the defendants ' is also legally' coparceners for all purposes having his qualified rights which is legally efficient, adequate and acceptable on the face of it for all purposes and the same cannot at all be impugned, usurp and grabbed or calf in question at any stage as the said rights so legally vested in the plaintiff is not available for assailing or questioning in any manner nor the said legal and valuable rights of the plaintiff could be contradicted or disputed in any manner, nor those rights of the plaintiff. could be legally opposed or contradicted by the defendants and they cannot at all extract, exploit or extort the legal and valuable rights of the plaintiff which have, accrued in him through his father i.e. defendant No.1, being the blood of the defendant no.1 and the same cannot at all be allowed to be siphoned in any manner and thus all the acts and deeds of the defendants in this context as are being maintained are to be hammered heavily with the legal iron hands, so that no injustice, inequity, discrimination and inequality could be drawn against the plaintiff by the defendants and further the unfair approach of the defendants in context to the plaintiff's



legal and valuable rights if are abused, outrage or made to be suffered by causing unjustness, malpractice, or with malfeasance then in such 'circumstances, the act and malafide conduct of j ;the defendants which is nefarious in designs coupled with deliberate mischief thereby causing infringement of the plaintiffs rights and deliberate prejudice being caused then in such circumstances, the defendants' mischievous acts and deeds are liable to be placed on the legal platform in order to get them judiciously' mirrored in order to remove the said injustice so caused/done by the defendants and .further all legal requisite actions against the defendants and their co-conspirators and are required to be booked for commission of the criminal offences punishable under the Indian Penal Code, 1860 alongwith holding the said illegal acts of the defendants as nullity being void ab-initio.

Para 27: That in view of the above detailed facts, it is undeniable and admitted fact that there existed Hindu Undivided Family prior to the death of late Sh. Balwant Singh and the said Hindu, undivided family/joint family continued even after the commencement of the Hindu Succession Act, 1956 and the defendant No.2 become , male coparceners of 1/2 share and join Sh.Balwant Singh, their father, in the properties and remained in joint possession thereof in suit properties No. 1 to 9. The great grandfather of the plaintiff namely Balwant Singh continued to be co-owner/ coparcener with respect to the entire properties of his share i.e. in Joint Hindu undivided coparcenery ancestral properties which were recorded in the revenue records in his name as a Karta/Manager of the family till he expired and thereafter, the defendant No.2 grandfather of the plaintiff was termed as Karta/manager of the family qua the properties/estate left behind by Sh.Balwant Singh and the fraud as detailed in the suit in hand, so played by the defendant No.3 in connivance with the defendants qua the suit property No.1 i.e. residential house, nowhere convey and said to yest any right



in her person as the suit property No.1 is also a property generated from the funds of land acquisition compensation arisen on account of acquisition of Joint Hindu undivided coparcenary ancestral property of the family of the. plaintiff which was situated in Village Bhalswa Jahangirpur, Delhi, in which the plaintiff has his right as co-owner/cosharer in Joint Hindu undivided coparcenary ancestral property on account of facts as detailed in the suit and the suit properties No.2 to 4 as detailed in the suit being purchased from the land acquisition compensation amount are also Joint Hindu undivided coparcenary ancestral properties in which the plaintiff has his undivided share as detailed in the suit on account of his birth.”

29. It is apparent upon bare perusal of the plaint that the respondent discloses the cause of action by outlining the family tree, detailing the ancestral origin of the suit properties, and asserting his position as a coparcener with rights in the ancestral properties inherited by the family in paragraph no.3 of the plaint.

30. The continuation of the Hindu Undivided Family and the ancestral nature of the suit properties are reiterated in paragraph no.9 of the plaint where the respondent emphasizes that the suit properties were acquired using compensation from the acquisition of ancestral land, thereby, maintaining their character as Hindu Undivided Family properties.

31. Further, in paragraph no.20, the respondent asserts that none of the properties are self-acquired by the defendants, but rather inherited from their ancestors, reaffirming the joint ownership and coparcenary rights of the respondent.



32. By virtue of the aforesaid civil suit, the respondent has challenged the fraudulent actions of the petitioners in attempting to usurp the suit properties, thus, establishing a clear legal dispute regarding the ownership and rights over the ancestral properties which forms the basis of the cause of action in the suit.

33. It is clear from the judicial *dicta* rendered in the judgment of ***Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366***, that once the plaint discloses a cause of action in entirety, the application filed under Order VII Rule 11 of the CPC is liable to be dismissed.

34. At this preliminary stage, this Court deems it necessary to mention that this Court is not required to assess the veracity of the respondent's claims or to determine the merits of the case, instead, the limited test for adjudication of the instant petition is to decide whether the plaint, when the same is read in its entirety, discloses a cause of action.

35. Therefore, applying the aforesaid judgment in the case at hand, this Court is of the *prima facie* opinion that the instant petition involves questions of facts and contentions that require proper trial, for proper adjudication of the same and the same cannot be decided at the stage of Order VII Rule 11 of the CPC. This Court, after due consideration and perusal of the impugned order, concurs with the findings of the learned Trial Court, observing that the respondent has adequately disclosed the cause of action. Furthermore, it has been rightly held by the learned Trial Court that



the issue concerning the nature of the property requires a thorough trial and leading of evidence for proper adjudication.

36. Moving further, it is also the contention of the petitioners that the suit is barred by the provisions of Delhi Land Reforms Act, 1954 and the Delhi Land Revenue Act, 1954, however, they have failed to substantiate how these statutory provisions are applicable to the present case and have not brought on record any material submission to support their assertion. The same was also observed by the learned Trial Court, and thus, this Court is inclined to affirm the findings of the learned Trial Court in this regard. On the said aspect, this Court finds it apposite to mention that such contentions may be addressed after the necessary evidence is presented, and therefore, cannot be adjudicated at this stage under Order VII Rule 11 of the CPC.

37. The petitioners also contended that the respondent has not appropriately valued the suit for the purposes of determining court fees and jurisdiction and thus, the suit is barred by the law and the said submission was not dealt with by the learned Trial Court in accordance with the laws.

38. The learned Trial Court in paragraph no.7.4 of the impugned order has held that with regards to the issue of court fees, Section 7 (iv) (c) of the Court Fees Act, 1870 provides that where the suit is to obtain a declaratory decree where consequential relief is prayed for, then the amount of fee payable under the said Act shall be according to the amount at which the relief sought is valued in the plaint and in all such suits, the plaintiff shall state the amount at which he values the relief sought.



39. This Court has perused the contents of the plaint and paragraph no. 37 of the same, the respondent has provided valuation of the reliefs sought and on the face of it, the same is in accordance with the statutory requirements of the Court Fees Act, 1870 as rightly held by the learned Trial Court, therefore, the petitioner's argument regarding improper valuation and inadequacy of court fees lacks merit at this preliminary stage of the suit.

40. The petitioners have also contended that the learned Trial Court wrongly decided the issue of non-joinder of the necessary parties. It has been contented that the respondent's suit is barred as the plaint includes specific allegations pertaining to the suit properties being ancestral and since the respondent has not made all the coparceners a party, the plaint is liable to be rejected.

41. With regard to the said issue, the learned Trial Court held that the same is a matter which will have to be considered at the appropriate stage after framing of issues including an issue on this aspect, and after framing of issues, this particular issue can be treated as a 'preliminary issue' and if no evidence is required, it can be listed for arguments. It was further held by the learned Trial Court that even if it is ultimately held that the party alleged to be a necessary party is found to be one, the suit may not necessarily be dismissed without giving an opportunity to the respondent/plaintiff to amend the plaint by adding the concerned party.

42. At this juncture, it is imperative to state that as per the judgment of the Hon'ble Supreme Court passed in the matter of ***Prem Lala Nahata v. Chandi***



Prasad Sikaria, (2007) 2 SCC 551, the ground of mis-joinder or non-joinder of parties is not a ground for not entertaining a suit and the same is merely a procedural objection.

43. Therefore, it is apparent that the said ground of the petitioners do not hold any water and the same has been rightly determined by the learned Trial Court, thus, the said contention stands rejected.

44. Insofar as the scope of revisional jurisdiction under Section 115 of the CPC is concerned, it is clear that the exercise of the supervisory power conferred upon the Court under the said provision is discretionary and a petition filed under the aforesaid provision shall not be entertained by interfering with the findings of the Court below unless there is a jurisdictional error or a legal irregularity which is apparent on the face of it.

45. As already mentioned above, the learned Trial Court held that the issues are triable in nature in view of the fact that the nature of suit properties is in dispute as to whether the said properties are ancestral properties or self-acquired properties and a cause of action arises in favour of the respondent. Therefore, in view of the foregoing discussions and findings, this Court is of the opinion that the learned Trial Court rightly dismissed the application filed by the petitioners under Order VII Rule 11 of the CPC as the issues in the instant matter are triable in nature and warrants a proper trial.

46. In light of the above facts and circumstances, this Court finds no merit in the instant petition to interfere with the impugned order under Section 115



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of the CPC and the impugned order dated 25th January, 2024, passed by the learned Civil Judge- N/W District, Rohini Courts, Delhi in CS SCJ no.1318/2019 is upheld.

47. Accordingly, the instant revision petition, being bereft of any merit, stands dismissed along with pending applications, if any.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 16, 2024
RK/RYP/MK

Click here to check corrigendum, if any

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Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 18.10.2024
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