



\$~42

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

+ **CS(OS) 89/2025 and I.A.3901/2025**

Date of Decision: 06.08.2025

IN THE MATTER OF:

SANJEEV VIJ

S/O LATE SH. VISHWANATH VIJ

R/O C-547, 2ND FLOOR

DEFENCE COLONY, NEW DELHI – 24

.....PLAINTIFF

(Through: Mr. Vivek Sood, Sr. Advocate with Mr Akshat Aggarwal, Advocate.)

Versus

VEENA VIJ

W/O LATE SH. VISHWANATH VIJ

R/O C-547, 2ND FLOOR

DEFENCE COLONY, NEW DELHI – 24

.....DEFENDANT

(Through: Mr. Dipesh Sharma, Advocate.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

I.A.5678/2025 (u/O VII R 11 CPC)

1. Heard learned counsel for the parties on the instant application preferred under Order VII Rule 11 of the Code of Civil Procedure, 1908.
2. Mr. Dipesh Sharma, learned counsel appearing for the applicant, contends that the plaintiff has himself admitted in his reply to the application that the property in question was inherited by the defendant from her mother. It is thus his case that the property belonged to the maternal grandmother of the plaintiff, over which the plaintiff possesses no enforceable right.



3. He submits that the claim advanced in the suit is predicated upon an alleged Will dated 18.11.2011, and inasmuch as the executant of the Will remains alive, no cause of action has accrued in favour of the plaintiff as on the date to institute the present civil suit. Learned counsel further urges that the plaintiff may, at best, avail of alternative remedies available under law.

4. *Per contra*, Mr. Vivek Sood, learned Senior Counsel appearing for the plaintiff/non-applicant, has drawn the attention of this Court to document P-2, being the Will dated 18.11.2011, wherein the defendant has admitted that the second floor of the property in question was constructed by the plaintiff out of his own funds. He submits that, in view of such construction having been effected by the plaintiff, the latter is entitled to seek a declaration of ownership *qua* the said portion so long as the construction subsists.

5. Learned Senior Counsel has also referred to document P-1, namely, the Will executed by the maternal grandmother of the plaintiff, Mrs. Savitri Nanda, wherein the executant had unequivocally stipulated that all her children shall exercise full rights of ownership over the respective portions assigned and bequeathed to them, *albeit* with the prohibition that none of the children shall, in any manner, dispose of or create a charge or lien on their share of the property, whether by sale, mortgage, or otherwise.

6. The said Will further emphasized that the property shall not be alienated outside the family and shall remain within the family members for their benefit or that of their legal heirs.

7. It is thus contended by Mr. Sood that the plaintiff, being one of the sons of the defendant, possesses an inherent right over the property in question. He reiterates that, in any event, the issues raised necessitate a full trial, wherein the parties may adduce oral and documentary evidence.



Accordingly, learned Senior Counsel submits that the instant application is devoid of merit and warrants dismissal.

8. I have considered the submissions made by the learned counsel appearing for the parties and have perused the record.

9. The instant civil suit seeks a declaration to the effect that the plaintiff be adjudged the owner of the suit property bearing No. C-547, Second Floor, Defence Colony, New Delhi-110024. The plaintiff further prays for consequential relief, including an injunction, etc. The facts of the case disclose that the defendant is the mother of the plaintiff and has inherited the suit property, along with her siblings, from her mother. This position stands admitted by the plaintiff, as evident from a perusal of the reply filed to the application under Order VII Rule 11 of the Code of Civil Procedure, 1908. The relevant excerpt from paragraph 2 of the said reply is reproduced hereunder:-

“2. That the Plaintiff has specifically pleaded in the para 9 of the plaint that “It is trite to mention herein that the Defendant always said and admitted that though the property is inherited by the Defendant but the suit property is entirely built by the Plaintiff through his resources therefore, he is the Jut 02 real owner of the constructions of the suit property with the permission of defendant and upto the date the constructions stand, defendant cannot evict the plaintiff from suit property.” Therefore, the Plaintiff is a permanent licensee till the construction stands.”

10. The plaintiff's case is premised on the contention that an arrangement existed among the plaintiff, the defendant, and her siblings, all of whom reside in the suit property, to construct their respective portions. Consequently, the plaintiff asserts that he constructed the second floor of the property bearing No. C-547, Defence Colony, New Delhi-110024, using his own funds, thereby establishing a right over the said portion.



11. In the considered opinion of this Court, the plaintiff's suit appears to be founded on the assertion that, by virtue of having constructed the suit property with his own funds and pursuant to the Will dated 18.11.2011, the rights over the said portion have been bequeathed to him.

12. However, this contention does not constitute a valid cause of action in favour of the plaintiff, given that the executant of the Will dated 18.11.2011 remains alive, rendering the Will inoperative as a basis for claiming rights during the testator's lifetime. On this aspect, reference can be drawn to Section 3(64) in The General Clauses Act, 1897, which reads as under:-

“(64) will shall include a codicil and every writing making a voluntary posthumous disposition of property;”

13. Consequently, the plaint fails to disclose a valid cause of action. The documents annexed to the plaint also do not evince any enforceable right of the plaintiff over the suit property. Unless the plaintiff can establish a clear legal right giving rise to a cause of action, the claim advanced in the suit is liable to be rejected. As regards the Will executed by the plaintiff's maternal grandmother, it is noted that the same does not form the basis of the instant civil suit.

14. In view of the foregoing, this Court finds that no cause of action has accrued to the plaintiff to institute the present civil suit.

15. Accordingly, the plaint stands rejected.

CS(OS) 89/2025 and I.A.3901/2025

16. In view of the decision passed in I.A.5678/2025, the instant civil suit, along with pending application, stands dismissed.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 6, 2025/tr/sp