



2025:DHC:9482-DB



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

Date of decision: 13.10.2025

+ RFA(OS) 4/2023

MS. KARISHMA OBEROIAppellant

Through: Mr. Tarun Singla, Advocate.

versus

MR. AJAY KUMAR & ANR.Respondents

Through: Mr. K.K. Sharma, Senior
Advocate along with
Ms. Bhanita Patowary and
Mr. Pranav Pareek, Advocates
for R-2.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

% **JUDGEMENT (ORAL)**

ANIL KSHETARPAL, J.

1. The present Appeal, filed under Section 96 of the Code of Civil Procedure, 1908 [“CPC”] read with Section 10 of the Delhi High Court Act, 1996, assails the correctness of the **Order dated 08.12.2023** [“**Impugned Order**”] passed by the learned Single Judge in CS(OS) 637/2021, titled “*Karishma Oberoi v. Ajay Kumar & Anr.*”, whereby the plaint was rejected in exercise of powers under Order VII Rule 11 of the CPC.

2. In order to comprehend the issue involved in the present case,

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certain facts are required to be noticed:-

- A. Late Sh. Rajiv Oberoi [**“the Common Ancestor”**], who died on 03.05.2001, was the owner of the suit property at the time of his death. He left behind his widow, Smt. Neeraj Oberoi (who died on 22.10.2011), two children namely, Ms. Karishma Oberoi [**“the Plaintiff/Appellant herein”**] & Mr. Abhishek Oberoi [**“Defendant No. 2/Respondent No. 2 herein”**] and mother Smt. Nirmal Oberoi.
- B. Mr. Ajay Kumar [**“Defendant No. 1/Respondent No. 1 herein”**], who is the paternal uncle (*Fufa*) of the Appellant, executed a registered Sale Deed dated 10.02.2010 of the Suit Property on the strength of an alleged Power of Attorney executed by the Common Ancestor on 23.11.1999. The said Sale Deed was executed by Respondent No. 1 in favour of Respondent No. 2.
3. The Plaintiff filed the suit with the following prayers:-
- “A. Declare the alleged agreement to sell, general power of attorney, will and receipt dated 23.11.1999 for property bearing no. M.I.G flats no. 42, Prasad Nagar, Delhi, as null and void;
- B. Declare the Sale Deed dated 10/02/2010 illegally executed by the Defendant no. 1 in favour of Defendant No 2, Vide reg no. 1,114, book no. 1, Vol 13,502 page no. 149 to 155 for property bearing no. M.I.G flats no. 42, prasad nagar, Delhi as null and void;
- C. Pass the preliminary decree of partition in favour of the plaintiff and against the defendants thereby declaring that the plaintiff has 50 % share in the property bearing M.I.G Flats No. 42, Prasad Nagar, Delhi as shown in the site plan;
- D. Further, it is prayed that after passing of preliminary decree, the property be partitioned by metes and bound



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and thereafter parties be put in their respective shares;

E. Final decree of partition may also be passed in favour of the plaintiff and against the defendants and the plaintiff be put in possession of 50% share in the suit property;

F. It is therefore further prayed that a decree of permanent injunction may kindly be passed in favour of the plaintiff and against the defendants thereby restraining the defendants from selling, assigning or otherwise parting with the possession of properties no M.I.G flats no. 42, ground floor, prasad nagar, New Delhi, or from creating a third party interest in the said property in any manner;

G. direct the Defendant no.2 to hand over the gold jewellery to the plaintiff as per family settlement dated 24.08.2014;

H. Direct the defendant no.1 to disclose whether it has paid a sum of rs.2 crore to defendant no.2 or not in terms of the family settlement dated 24.08.2014;

I. Direct the defendants to pay the cost of the proceedings to the plaintiff and in this behalf;

J. pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. An application under Order VII Rule 11 of the CPC was filed by Respondent No. 2 seeking rejection of the plaint on the ground that particulars of fraud, as required under Order VI Rule 4 of the CPC, had not been disclosed in the plaint. The learned Single Judge accepted the application under Order VII Rule 11 of the CPC and proceeded to reject the plaint while observing that particulars of fraud have not been disclosed, and therefore, the Appellant has no cause of action.

5. Learned counsel for the Appellant contends that the Sale Deed was executed by Respondent No. 1 in favour of Respondent No. 2 in

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the year 2010 on the strength of the alleged Power of Attorney executed by the Common Ancestor on 23.11.1999, whereas the Common Ancestor died on 03.05.2001. Upon the death of the Common Ancestor, Power of Attorney, if any, in favour of Respondent No. 1 ceased to have any effect.

6. He submits that the plaint could not have been rejected on the ground that particulars of fraud were not pleaded. He further submits that in substance, the relief of declaration has been sought to the effect that the Sale Deed is not binding upon the Appellant.

7. *Per contra*, learned Senior Counsel for Respondent No. 2 submits that the plaint has been rightly rejected, since the particulars of the fraud, as mandated under Order VI Rule 4 of the CPC, were not incorporated in the plaint, and in the absence thereof, the plaint does not disclose any cause of action.

8. Learned Counsel for the parties have been heard at length and, with their able assistance, the paperbook has been perused.

9. The grounds for rejection of the plaint are enlisted in Order VII Rule 11 of the CPC. If the plaint does not disclose a cause of action, it is liable to be rejected. However, the cause of action comprises the entire bundle of facts which have been pleaded in the plaint, and it is based upon peculiar facts of a particular case.

10. In this case, the Plaintiff has asserted that the Sale Deed executed by Respondent No. 1 in favour of Respondent No. 2 is not binding upon her, as Respondent No. 1 had no authority to execute the said Sale Deed.

11. In such circumstances, more than alleging fraud, the Appellant claims that Respondent No. 1 lacked the enabling power to execute



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the Sale Deed on two grounds:-

- (i) That the Common Ancestor never executed any Power of Attorney and,
- (ii) That the Power of Attorney, if any, ceased to have any force after the death of the Common Ancestor.

12. It is well-settled that while considering an application under Order VII Rule 11 of the CPC, the inquiry of the Court is strictly limited to the averments made in the plaint. Neither the written statement nor any application filed by the defendant can be considered at this stage.

13. In the present case, the learned Single Judge rejected the plaint on the ground that particulars of fraud had not been pleaded, without examining the plaint in its entirety. This approach is inconsistent with the principles laid down by the Co-Ordinate Bench of this Court in *Navigators Logistics Ltd. v. Kashif Qureshi*¹, wherein it was held that courts must not step into the merits of the case or consider evidence in support of averments when deciding the maintainability of a plaint under Order VII Rule 11. The Court emphasised that such an enquiry is limited to whether the plaint, on its face, discloses a cause of action. The relevant paragraph of *Navigators Logistics Ltd. (Supra)* is reproduced hereinbelow:

“32. The Supreme Court in *Kuldeep Singh Pathania case* has while dealing with the scope of inquiry under Order VII Rule 11 of CPC, held that the scope of inquiry has to be limited to the pleadings of the Plaintiff and neither the written statement nor the averments in the Application under Order VII Rule 11(a) of CPC filed by Defendant can be considered in the following manner:

¹ 2024 SCC OnLine Del 8244



“10. In the present case, the issue relates to an enquiry under Order 7 Rule 11 (a) of the Code, and hence, there is no question of a preliminary issue being tried under Order 14 Rule 2(2) of the Code. The Court exercised its jurisdiction only under Section 83(1)(a) of the Act read with Order 7 Rule 11(a) of the Code. Since the scope of the enquiry at that stage has to be limited only to the pleadings of the plaintiff, neither the written statement nor the averments, if any, filed by the opposite party for rejection under Order 7 Rule 11(a) of the Code or any other pleadings of the respondents can be considered for that purpose.

11. In *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [(2006) 3 SCC 100], this Court has dealt with a similar issue. To the extent relevant, para 12 reads as follows: (SCC p. 115)

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”



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12. It is not necessary to load this judgment with other judgments dealing with this first principle of Order 7 Rule 11(a) of the Code. As held by this Court in *Virender Nath Gautam v. Satpal Singh*, (2007) 3 SCC 617 at para 52 : (SCC p. 632)

“52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.”

(Emphasis Supplied)

14. In such circumstances, the suit is primarily based on a lack of enabling power to sell the property rather than on fraud.

15. Thus, the learned Single Judge has erred in rejecting the plaint at the threshold. Before proceeding to reject a plaint at the initial stage, the Court is required to holistically examine the contents of the plaint in a pragmatic manner.

16. In the present case, the learned Single Judge erred in rejecting the plaint without examining the contents of the entire plaint. Moreover, lack of pleadings in terms of Order VI Rule 4 of the CPC is not one of the grounds for rejection of the plaint under Order VII Rule 11 of the CPC.

17. The CPC is a procedural Code which is required to be interpreted and applied in that way and not as a substantive Code.

18. Learned counsel for the Respondent submits that the Appellant has not paid or deposited *ad valorem* Court fee, particularly when she is not in physical possession of the property. It is evident that the



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Appellant has prayed for partition of the joint property. The Appellant, would be a co-sharer, of the property if she establishes the first prayer, and then she could be assumed to be in constructive possession as a co-sharer, hence, *ad valorem* Court fee is not payable in view of the judgment rendered by this Court in *Anurag Sant v. Anupriya Vij*².

19. Consequently, the impugned Order is set-aside, and the plaint is restored to its original number.

20. The Parties through their counsels are requested to appear before the learned Single Judge (Roster Bench) on 28.10.2025.

21. Accordingly, the appeal stands allowed and disposed of along with pending application(s), if any.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 13, 2025/tk/rn/kr

² 2025 SCC OnLine Del 5592