



2025:DHC:4078



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

Date of Decision: 20th May, 2025

+ CS(OS) 186/2022 & CRL.M.A. 7955/2023, I.A. 5088/2022, I.A. 6042/2022, I.A. 11312/2022, I.A. 11317/2022, I.A. 11318/2022, I.A. 11511/2022, I.A. 21221/2022, I.A. 6291/2023, I.A. 10018/2023, I.A. 17973/2023 & I.A. 29622/2024

SHRI SAMAY GARG

.....Plaintiff

Through: Mr. Shiv Charan Garg, Mr. Imran Khan and Ms. Jahavi Garg, Advocates.

versus

SHRI RAM KUMAR GARG & ORS.

.....Defendants

Through: Mr Vivek Garg, Advocate for D-1, 3, 7, 8 and 21.

Mr. Ashok Mittal, Advocate for D-22 and 23.

Mr. Bharat Bhushan and Mr. Aakanksha, Advocate for D-24 and 25.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. No. 11511/2022 and I.A. No. 21221/2022

1. The captioned application(s) have been filed by the Defendant No.3 and Defendant No.8 respectively under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') seeking rejection of the plaint.

2. The underlying suit has been filed by the Plaintiff seeking partition, possession, declaration (qua Plaintiff's own title) and permanent injunction claiming co-ownership with respect to property ad-measuring 1008 Sq. Yds.



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in Khasra No. 79/1 min (New) and 293/1 min (Old), situated at Village Shahbad, Daulatpur, Delhi ('suit property').

3. It is stated in the plaint that the suit property entirely belonged to his great grandfather i.e., late Sh. Bharat Singh and the same devolved upon Plaintiff's father i.e., late Sh. Satish Kumar¹ to the extent of 504 Sq. Yds.

4. The Plaintiff has setup a plea that late Sh. Satish Kumar's share in the suit property has devolved upon the Plaintiff by virtue of the unregistered Will dated 22.05.2019 executed by his father i.e., late Sh. Satish Kumar. It is stated that the Plaintiff has become a co-owner of the suit property by virtue of the said unregistered Will dated 22.05.2019. In order to substantiate the above said averment the Plaintiff has also relied upon a Memorandum of Family Settlement ('MoFS') dated 20.12.2020, wherein all other legal heirs of late Sh. Satish Kumar and late Sh. Rati Ram have accepted the said Will dated 22.05.2019 and consequent devolution of a part of suit property (i.e., 504 Sq. Yds.) in favour of the Plaintiff.

5. The Plaintiff claims to be in joint possession with the other co-owners and seeks partition by metes and bounds.

Arguments of the Defendant Nos. 3 and 8

6. Learned counsel for the Defendant No.3 and 8 has addressed common arguments in both the applications.

6.1. He stated that Defendant No. 8 is the legal heir of late Sh. Lakhi Ram, who admittedly co-owned 504 Sq. Yds. of the suit property with late Sh. Rati Ram (grandfather of the Plaintiff).

¹ Sh. Satish Kumar Garg.



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6.2. He stated that suit property was jointly purchased by late Sh. Rati Ram (grandfather of the Plaintiff) and late Sh. Lakhi Ram (father of the Defendant No.8) who were brothers, vide registered sale deed dated 22.05.1970. He stated that therefore, both of them were co-owner of 504 Sq. Yds. respectively. He stated that the assertion in the plaint that the suit property belonged to late Sh. Bharat Singh (great grandfather of the Plaintiff) is factually incorrect and a false plea.

6.3. He stated that the unregistered Will dated 22.05.2019 relied upon by the Plaintiff does not give any right to the Plaintiff to claim co-ownership as late Sh. Satish Kumar (i.e., the father of the Plaintiff) had sold his entire share of the suit property i.e., 504 Sq. Yds. to Smt. Ashu Garg (proposed Defendant No.20) and Sh. Gaurav Gupta (proposed Defendant No.21) vide two (2) separate sale deeds both dated 10.08.2011.

6.4. He stated that the said sale deeds dated 10.08.2011 were executed in pursuance of two (2) unregistered Agreements to Sell (ATS) both dated 16.04.1999, two (2) registered General Power of Attorney (GPA) both dated 16.04.1999, two (2) registered Will both dated 16.04.1999 and two (2) registered Special Power of Attorney (SPA) both dated 16.04.1999 executed by late Sh. Satish Kumar after taking full consideration for the entire 504 Sq. Yds. He stated thus, Sh. Satish Kumar during his lifetime disposed of his respective share of the suit property and it did not form part of his estate at the time of his death.

6.5. He stated that the said material fact has been concealed by the Plaintiff in the plaint from this Court.



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6.6. He stated that the said Smt. Ashu Garg (proposed Defendant No.20) has further sold major portion of her share in the suit property by registered sale deed(s).

6.7. He stated that Plaintiff has filed the underlying suit on the premise that a purported unregistered Will dated 22.05.2019 has been executed by late Sh. Satish Kumar in favour of Plaintiff. He stated that however, when the Plaintiff filed a Succession Petition No.141/2022 before the Administrative Civil Judge for issuance of succession certificate *qua* Life Insurance Policy bearing No. 842268385, the Plaintiff affirmed on oath that Sh. Satish Kumar died intestate. He stated that the Plaintiff examined himself as 'PW-1' in those proceedings and tendered his evidence affidavit marked 'Ex. PW-1/A', stating that Sh. Satish Kumar had died intestate. He states that therefore, the unregistered Will dated 22.05.2019 which forms the basis of the case of the Plaintiff is not a genuine document.

6.8. He stated that the Plaintiff has after perusing the documents dated 16.04.1999 produced by the Defendant Nos. 3 and 8 filed an application for amendment of the plaint in 2023 to challenge the said registered documents. He states that challenge to the said documents in the present suit would be barred by limitation in terms of Article 58 read with Article 65 of the Limitation Act, 1963 ('Act of 1963').

6.9. He stated that the suit property has been over-valued to attract the pecuniary jurisdiction of this Court. He stated that the current market value of the suit property is approx. Rs. 80 lakhs.

6.10. He stated that the present suit is a counter blast to FIR No. 510/2021 registered against the Plaintiff at PS KN Katju Marg as per the complaint of



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the Defendant No.3 on 20.02.2021 with respect to the possession of the suit property.

Arguments of the Plaintiff

7. In reply, learned counsel for the Plaintiff stated that Defendant Nos.3 and 8 have relied on the documents dated 16.04.1999 executed by late Sh. Satish Kumar in favour of Smt. Ashu Garg (proposed Defendant No.20) and Sh. Gaurav Gupta (proposed Defendant No.21).

7.1. He stated that alleged sale deeds dated 10.08.2011 executed in favour of Smt. Ashu Garg (proposed Defendant No.20) and Sh. Gaurav Gupta (proposed Defendant No.21) falsifies the stand of the said Defendants, as the said sale deeds while recording that vendor is Sh. Satish Kumar Garg does not have any mention of the GPA dated 16.04.1999.

7.2. He stated that on 16.04.1999 father of the Plaintiff had purchased *adjacent* property measuring 856 Sq. Yds. out of same Khasra No. 79/1 min (New) and 293/1 min (Old), from one Sh. Ram Rattan Gupta and Sh. Mahabir Prasad Gupta vide documents i.e., GPA, ATS, Receipt, Affidavit etc., all dated 16.04.1999. He stated that the father of the Plaintiff also took possession of the *adjacent* property on the same day.

7.3. He stated that Sh. Ram Rattan Gupta, Sh. A.P. Gupta, Sh. Sanjay Prakash Garg, Smt. Ashu Garg and Sh. Gaurav Gupta were all present at the time of the execution of the said documents of 16.04.1999 qua adjoining property being family members. He stated that it appears that the Defendants hatched a conspiracy to grab the suit property and the registered documents dated 16.04.1999 in favour of Smt. Ashu Garg (proposed Defendant No.20)



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and Sh. Gaurav Gupta (proposed Defendant No.21) were fraudulently got executed from late Sh. Satish Kumar.

7.4. He stated that I.A. 6291/2023 has been filed under Order VI Rule 17 CPC, seeking amendment of the plaint to challenge the documents dated 16.04.1999, 22.07.2011 and 10.08.2011 alleged to have been executed by late Sh. Satish Kumar in favour of Smt. Ashu Garg (proposed Defendant No.20) and Sh. Gaurav Gupta (proposed Defendant No.21).

7.5. He stated that with respect to the declaration made by the Plaintiff herein in Succession Petition No. 141/2022 as regards the intestacy of late Sh. Satish Kumar, the same was an inadvertent error. He states that there is no dispute between the legal heirs of late Sh. Satish Kumar as to the existence of the Will dated 22.05.2019 and its genuineness.

7.6. He states that with respect to the *adjacent* property referred to in paragraph 7.2 as well disputes have arisen between the parties and a separate suit CS(OS) No. 275/2022 has been filed by the Plaintiff herein.

Analysis and Findings

8. This Court has heard the learned counsel for the parties and perused the record.

9. The suit land falls in Khasra No. 79/1 min (New) and 293/1 min (Old).

10. Khasra No. 79/1 min (New) is a large piece of land. The subject matter of this suit is 1008 Sq. Yds. parcel of land falling on the northern side of the Khasra ('suit property' or 'Property No. A').

However, between the Plaintiff and Defendant Nos. 1 to 8, their family also owned title rights in the adjacent land parcel admeasuring 1108 Sq. Yds. ('adjacent property' or 'Property No. B') falling in the same Khasra No. 79/1



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min (New). It is the case of the Plaintiff that his father late Sh. Satish Kumar owned 856 Sq. Yds. out of this Property No. B.

11. There are two (2) separate suits filed by the Plaintiff herein for asserting his inheritance rights in the said two (2) plots i.e., CS(OS) 186/2022 and CS(OS) 275/2022. Therefore, documents brought on record in both suits are common and hold significant evidentiary value. During the arguments in the captioned suit, the documents evidencing the averments were cross-referred by the counsels from both the suits. The contesting parties to the suit are common being the lineal descendants of late Sh. Bharat Singh.

12. It is stated in the plaint² that the suit property i.e., Property No. A (admeasuring 1008 Sq. Yds.) initially belonged to Plaintiff's great grandfather late Sh. Bharat Singh. Thereafter, the suit property devolved in equal shares (of 504 Sq. Yds. each) upon his two (2) sons i.e., Sh. Lakhi Ram (father of the Defendant No.8) and Sh. Rati Ram (grandfather of the Plaintiff).

12.1. It is stated that late Sh. Rati Ram's share of 504 Sq. Yds. devolved upon his son Sh. Satish Kumar (father of the Plaintiff) vide registered Will dated 11.09.1981. It is stated that Sh. Satish Kumar's share of 504 Sq. Yds. has devolved upon the Plaintiff by virtue of the unregistered Will dated 22.05.2019. It is stated that the Class-I legal heirs of late Sh. Satish Kumar and late Sh. Rati Ram have entered into a MoFS dated 20.12.2020 confirming the aforesaid unregistered Will dated 22.05.2019.

12.2. It is stated that late Sh. Lakhi Ram's share of 504 Sq. Yds. has devolved upon Defendant Nos. 1 to 8.

² Paragraph nos. 3 to 8.



12.3. It is stated that Plaintiff along with Defendant Nos. 1 to 8 are the co-owners of the suit property; in its joint possession and the suit has been filed for partition by metes and bounds since Defendant Nos. 1 to 8 have declined Plaintiff's request for partition.

12.4. It is in these facts and circumstances, a simplicitor suit for partition of Property No. A based on the devolution of title from late Sh. Bharat Singh to late Sh. Satish Kumar and thereafter, to the Plaintiff relying upon testamentary succession is filed in the present form.

13. At this juncture it would be imperative to refer to the judgment of the Supreme Court in **Kuldeep Sing Pathania v. Bikram Singh Jaryal**³ wherein the Supreme Court held that while deciding an application under Order VII Rule 11 CPC the Court has to only consider the plaint or in essence the pleading of the Plaintiff to decide whether it constitutes any cause of action. The relevant portion of the said judgment reads as under:

“7. The court can only see whether the plaint, **or rather the pleadings of the plaintiff, constitute a cause of action.** Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. **In other words, under Order 7 Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only** and not on the rebuttal made by the defendant or any other materials produced by the defendant.”

(Emphasis supplied)

Therefore, this Court in the facts of the present case can consider the pleadings of the Plaintiff i.e., replies filed by the Plaintiff to the captioned

³ (2017) 5 SCC 34.



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application(s) and its averments in I.A. 6291/2023 (filed under Order VI Rule 17 CPC), while undertaking the exercise discerning if there exists any cause of action in favour of the Plaintiff.

Unregistered Will dated 22.05.2019

14. Plaintiff has filed this suit relying upon the unregistered Will dated 22.05.2019 executed by his father i.e., late Sh. Satish Kumar. In the said Will, the details of the immovable property relevant to this suit reads as under:

“ii) Land in **Khasra no. 79/1 Min. Area 856 sq. yds.** situated in Village Sahibabad, Daulatpur, Delhi.”

(Emphasis supplied)

14.1. At this stage, even if the said unregistered Will dated 22.05.2019 is assumed to be genuine, in the considered opinion of this Court, the said details do not correspond to the suit property i.e., Property No. A. In fact, the said description squarely corresponds to late Sh. Satish Kumar’s share of 856 Sq. Yds. in Property No. B which is a subject matter of CS (OS) 275/2022.

14.2. Moreover, late Sh. Satish Kumar on the Plaintiff’s own showing only co-owned 504 Sq. Yds. in the suit property i.e., Property No. A. Since late Sh. Satish Kumar co-owned only 504 Sq. Yds. he could not have transferred 856 Sq. Yds. to the Plaintiff in Property No. A through the unregistered Will dated 22.05.2019. The unregistered Will dated 22.05.2019 therefore, does not refer to the suit property at all.

14.3. This finding of the Court will be further substantiated from the site plans filed by the Plaintiff and the documents executed by late Sh. Satish Kumar.



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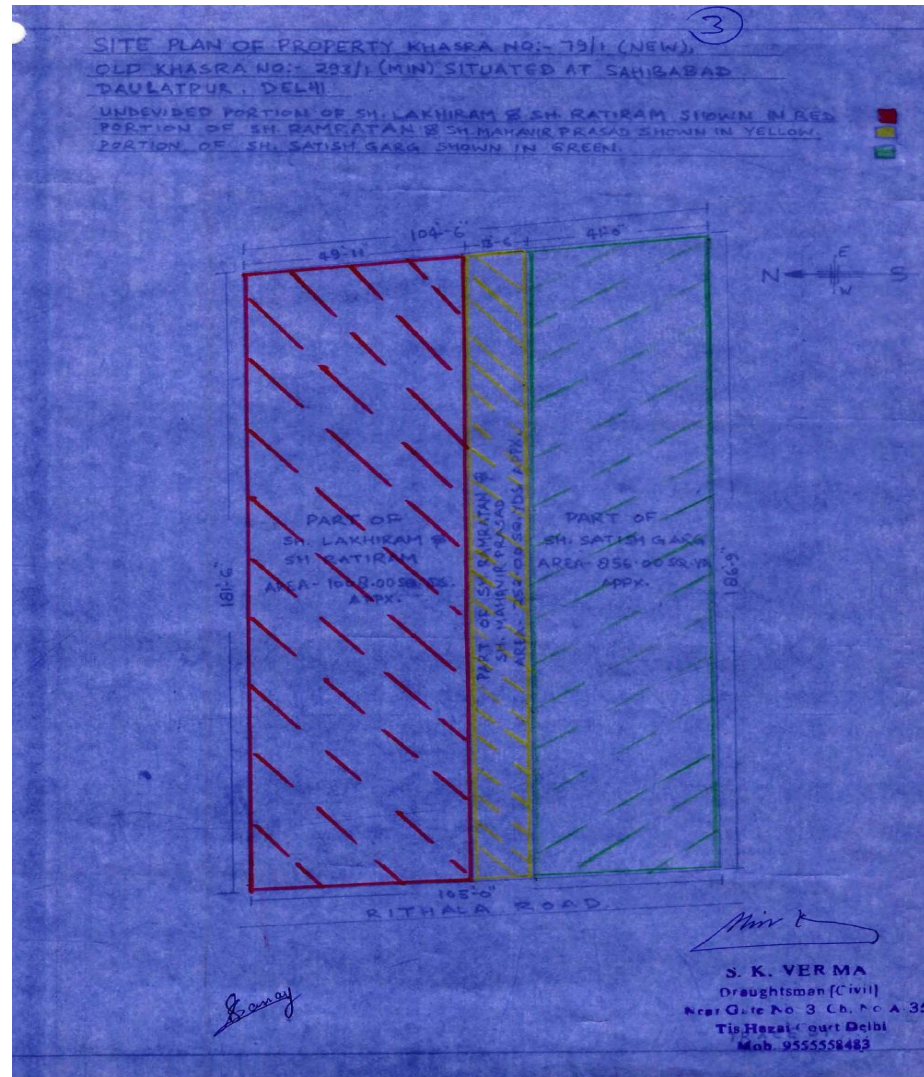


Site Plan(s) filed by the Plaintiff in CS(OS) 186/2022 and CS(OS) 275/2022

15. The Plaintiff in the underlying suit has placed on record a site plan ('Site Plan 1') to show the location of the suit property (i.e., Property No. A) and the *adjacent* property (i.e., Property No. B) falling in Khasra No. 79/1 min (New). In the Site Plan 1, Property No. A is shown in red and Property No. B is the sum total of area shown in green and yellow. As per the Plaintiff, late Sh. Satish Kumar owned 856 Sq. Yds. in Property No. B which is shown in green color and this claim is a subject matter of CS (OS) 275/2022. The site plan is as under:



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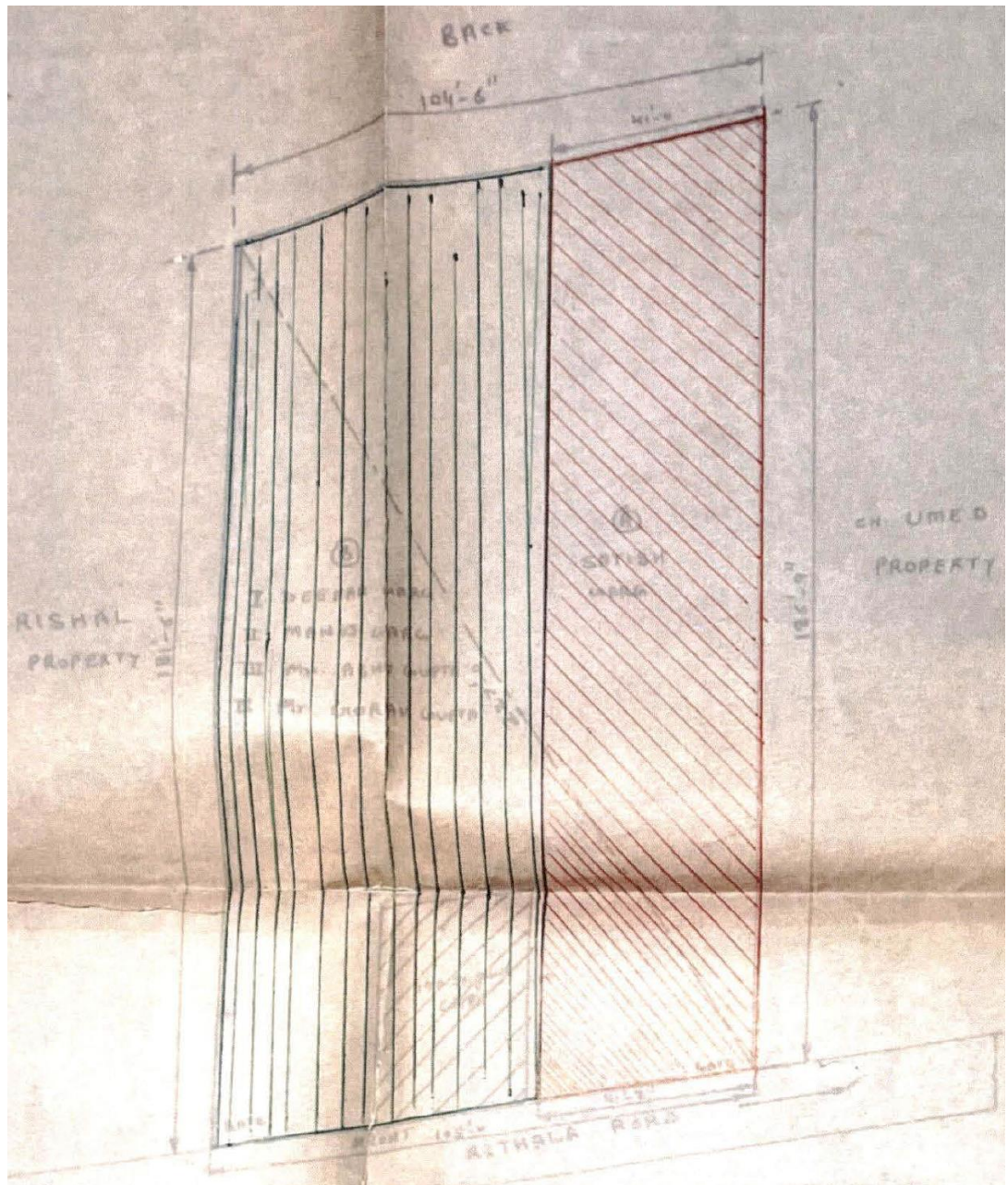
15.1. Further the Plaintiff in CS(OS) 275/2022 has filed a site plan ('Site Plan 2') with respect to Khasra No. 79/1 min (New) admeasuring 2116 Sq. Yds. The subject matter of CS (OS) 275/2022 is late Sh. Satish Kumar's share of 856 Sq. Yds. In the Site Plan 2 filed in the said suit, this 856 Sq. Yds. is shown in red colour and the balance area of 1260 Sq. Yds. is shown in green colour. This area shown in green colour includes the suit property herein i.e., Property



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No. A. The said site plan filed by the Plaintiff in CS(OS) 275/2022 is reproduced hereunder:



15.2. A comparative analysis of Site Plan 1 and Site Plan 2, placed on record by the Plaintiff in the respective complaints, unequivocally demonstrates that the



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suit property i.e., property No. A is located on the northern side, with the *adjacent* property situated immediately to its south.

15.3. Further in Site Plan 2 it is recorded that the northern side portion property (suit property herein) marked in green belongs to individuals namely: (i) Sh. Deepak Garg (i.e., Defendant No. 8 herein); (ii) Smt. Ashu Garg (i.e., proposed Defendant No. 20 herein); and (iii) Sh. Gaurav Gupta (i.e., proposed Defendant No. 21 herein).

15.4. In this suit, Defendant Nos. 3 and 8 have categorically asserted that Sh. Satish Kumar during his lifetime on 16.04.1999 sold his share of 504 Sq. Yds. in the suit property in favour of Smt. Ashu Garg (i.e., proposed Defendant No. 20 herein); and Sh. Gaurav Gupta (i.e., proposed Defendant No. 21 herein). The Site Plan 2 filed by the Plaintiff in CS (OS) 275/2022 substantiates this stand taken by Defendant Nos. 3 and 8.

15.5. In the considered opinion of this Court, the discrepancy between Site Plan 1 and Site Plan 2, as filed by the Plaintiff in the respective suits, leads to the inescapable conclusion that, on the Plaintiff's own showing, no part of Property No. A i.e., the suit property vested in Sh. Satish Kumar at the time of his death.

15.6. This Court further observes that the recital in the unregistered Will dated 22.05.2019 with respect to the bequest of 856 Sq. Yds. in Khasra No. 79/1 min (New) pertains to the subject property in CS (OS) 275/2022 and does not pertain to Plaintiff's claim of 504 Sq. Yds. in the suit property.

Sale of Suit Property by Late Sh. Satish Kumar during his lifetime



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16. Defendant Nos. 3 and 8 have entered appearance and placed on record registered documents along with the captioned applications to show that late Sh. Satish Kumar had disposed of his share of 504 Sq. Yds. in the suit property i.e., Property No. A during his lifetime. The Plaintiff has filed its reply to the captioned applications and also filed an I.A. 6291/2023 for seeking amendment of the plaint due to the said documents. The reply of the Plaintiff to the captioned application negates the fundamental basis on which the plaint has been filed.

17. *Firstly*, the Defendant Nos. 3 and 8 have placed on record registered sale deed dated 22.05.1970, which shows that the Property No. A i.e., suit property (admeasuring 1008 Sq. Yds.) was purchased jointly by late Sh. Lakhi Ram (father of Defendant No.8) and late Sh. Rati Ram (grandfather of the Plaintiff). The said document falsifies the contention of the Plaintiff in the plaint that the suit property was initially owned by his great grandfather i.e., late Sh. Bharat Singh.

17.1. The Plaintiff in reply to the captioned application(s) has admitted the sale deed dated 22.05.1970 and averred that the suit property was indeed purchased by late Sh. Lakhi Ram and late Sh. Rati Ram jointly. Therefore, the premise that the suit property devolved upon the Plaintiff and Defendant Nos. 1 to 8 through Sh. Bharat Singh is false and the consequent relief sought as a lineal descendant of Sh. Bharat Singh is incorrect.

18. *Secondly*, the cause of action in the suit is premised on the fundamental basis that late Sh. Satish Kumar was a co-owner in the suit property i.e. Property No. A to the extent of 504 Sq. Yds. as on the date of his death (on



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19.08.2019) and thus, the property formed part of his estate and has devolved upon the Plaintiff as per testamentary succession.

18.1. Defendant Nos. 3 and 8 have however, produced on record documents dated 16.04.1999 executed by Sh. Satish Kumar (father of the Plaintiff) and sale deed dated 10.08.2011 (executed by the SPA of Sh. Satish Kumar) transferring his entire share of 504 Sq. Yds. in favour of Smt. Ashu Garg (proposed Defendant No. 20) and Sh. Gaurav Gupta (proposed Defendant No. 21) absolutely along with possession. The details of the documents executed by Sh. Satish Kumar on 16.04.1999 and his SPA holders on 10.08.2011 are as under:

In Favour of Smt. Ashu Garg (proposed Defendant No. 20)

- (i) Registered GPA dated 16.04.1999.
- (ii) Unregistered ATS dated 16.04.1999.
- (iii) Registered Will dated 16.04.1999.
- (iv) Receipt dated 16.04.1999.
- (v) Notarized Affidavit dated 16.04.1999.
- (vi) Registered SPA dated 16.04.1999 (in favour of husband of Smt. Ashu Garg).
- (vii) Registered sale deed dated 10.08.2011 (by SPA holder in favour of Smt. Ashu Garg).

In Favour of Sh. Gaurav Gupta (proposed Defendant No. 21)

- (i) Registered GPA dated 16.04.1999.
- (ii) Unregistered ATS dated 16.04.1999.
- (iii) Registered Will dated 16.04.1999.
- (iv) Receipt dated 16.04.1999.
- (v) Notarized Affidavit dated 16.04.1999.
- (vi) Registered SPA dated 16.04.1999 (in favour of father of Sh. Gaurav Gupta).
- (vii) Registered sale deed dated 10.08.2011 (by SPA holder in favour of Sh. Gaurav Gupta).



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18.2. Plaintiff after perusing the said documents dated 16.04.1999 and 10.08.2011 has filed an I.A. 6291/2023 under Order VI Rule 17 CPC for seeking amendment of the plaint to challenge the said documents on the allegation that the said documents though executed by late Sh. Satish Kumar, his signatures were obtained by the Defendants fraudulently.

It is contended by the Plaintiff that late Sh. Satish Kumar had indeed visited the office of Sub-Registrar on 16.04.1999 to execute documents for purchase of 856 Sq. Yds. falling in the *adjacent* property i.e., Property No. B (which is distinct and separate). It is alleged that it appears that late Sh. Satish Kumar was misled at the Sub-Registrar's office into signing the documents now propounded by Defendant Nos. 3 and 8, with respect to disposal of the share of late Sh. Satish Kumar in suit property i.e., 504 Sq. Yds. The Plaintiff has produced on record an unregistered ATS dated 16.04.1999 (**Ex. P-1**⁴) pertaining to purchase of 856 Sq. Yds. in Property No. B by Sh. Satish Kumar to explain the presence of Sh. Satish Kumar at the Sub-Registrar's office.

18.3. The submission of the Plaintiff that Sh. Satish Kumar was allegedly misled into signing the documents dated 16.04.1999 produced by Defendant Nos. 3 and 8, pertaining to disposal of his share of 504 Sq. Yds. in the suit property, stands falsified with the contents of the ATS dated 16.04.1999 (**Ex. P-1**) produced and relied upon by the Plaintiff.

18.4. In this ATS (**Ex. P-1**) itself Sh. Satish Kumar duly acknowledged that Defendant Nos. 8, Smt. Ashu Garg and Sh. Gaurav Gupta are the owners of the Property No. A. In the ATS dated 16.04.1999 (**Ex. P-1**), the boundaries of 856 Sq. Yds. of plot (which was the subject matter of purchase) were

⁴ This exhibit has been assigned in this order for purpose of identification of the document.



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delineated for identification and the ownership of Defendant Nos. 8, Smt. Ashu Garg (proposed Defendant No. 20) and Sh. Gaurav Gupta (proposed Defendant No. 21) was acknowledged while noting the boundary on the northern side. The relevant portion of the admitted ATS dated 16.04.1999 (**Ex. P-1**) produced by the Plaintiff reads as under:

“....

WHEREAS the first party is the owner of land measuring 1108sq. yds. Comprising in Khasra No. 79/1 min (New) and 293/1 min (Old) situated at Village Sahibabad Daulatpur, Delhi out of which the first party has purchased land measuring 1008 sq. yds. On the basis of Sale Deed regd. As No. 3841 in Addl. Book No.1 Volume No. 1231 on pages 42 to 44 on 26.5.1970 in the office of Sub-Registrar-II, Delhi and the remaining land measuring 100 sq. yds of pvt passage towards land southern side of the said land has been acquired by the first party as per settlement made between the first party and the owner of the adjoining land. The said land measuring 1108sq. yds (*sic*) is bounded as under: -

East:	Other land
West:	Road
North:	Joint property of S/Shri Deepak Garg, Gaurav Gupta and Smt. Ashu Garg]
South:	Road Property of Sh. Umed Singh, Sh. Raj Singh and Sh. Raj Pal.

AND WHEREAS the first party for his legal needs & bonafide requirements has agreed to sell the land measuring 856 sq. yds. (186'. 9"x41 ') out of the said land measuring 1108 sq. yds with all its rights, title & interests etc. unto the second party and the second party has also agreed to purchase the same from the first party for a total sale consideration amount of Rs. 85,000/- (Rs. Eighty-Five Thousand only) which has been received by the first party from the second party vide a separate receipt of this day in full and final settlement and nothing remains due against the second party. The said land measuring 856sq. yds. (186.9"x41') is bounded as under:-

East:	Other land
West:	Road



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North: **Portion of the said land sold to Shri Manoj Garg,
Gaurav Gupta and Smt. Ashu Garg]**
South: Property of Sh. Umed Singh, Sh. Raj Singh and Sh.
Raj Pal.
.....”

(Emphasis supplied)

18.5. Thus, the ATS dated 16.04.1999 (**Ex. P-1**) for purchase of 856 Sq. Yds. in Property No. B (i.e., the *adjacent* property) produced by the Plaintiff itself substantiates the stand of the Defendants as regards the transfer of 504 Sq. Yds. owned by Sh. Satish Kumar in favour of Smt. Ashu Garg (proposed Defendant No. 20) and Sh. Gaurav Gupta (proposed Defendant No. 21) at the contemporary time on 16.04.1999.

18.6. The registered documents dated 16.04.1999 and 10.08.2011 produced by the Defendant Nos. 3 and 8 and the Plaintiff negates the stand of the Plaintiff that the suit property formed part of the estate of Sh. Satish Kumar on the date of his demise i.e., 19.08.2019. Thus, the fundamental premise of the cause of action pleaded in the present suit that the suit property formed part of the estate of late Sh. Satish Kumar is incorrect.

18.7. Having perused the Site Plan 1 and Site Plan 2 filed by the Plaintiff and the ATS dated 16.04.1999 (**Ex. P-1**) and the registered documents dated 16.04.1999 and 10.08.2011 executed by late Sh. Satish Kumar, it is evident that the Plaintiff was aware about these documents and withheld these material facts and documents. The present plaint is an abuse of legal process by the Plaintiff.

18.8. The Plaintiff herein was born on 25.02.2002, whereas the registered documents executed by Sh. Satish Kumar in favour of Smt. Ashu Garg



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(proposed Defendant No. 20) and Sh. Gaurav Gupta (proposed Defendant No. 21) are of 16.04.1999 and 10.08.2011. The said documents were never challenged by Sh. Satish Kumar during his lifetime, whereas he expired on 19.08.2019. The suit property ceased to be a part of the estate of late Sh. Satish Kumar during his lifetime.

The right to challenge the said documents in accordance with law vested in Sh. Satish Kumar; however, he never challenged the said documents and accepted the same to be true and correct. In the considered opinion of this Court, the right to challenge the documents executed on 16.04.1999 and 10.08.2011 does not accrue to the Plaintiff (since Sh. Satish Kumar has since deceased) in view of Section 6(e) of the Transfer of Property Act, 1882 ('Act of 1882') [Re: **Indupal Kaur Sehgal v. Dr. Davinder Pal Singh Rekhi & Ors.**⁵].

18.9. This Court is unable to appreciate the legal and factual basis of the contentions raised by the Plaintiff to challenge the documents executed by late Sh. Satish Kumar in 1999, today in 2023. The Plaintiff himself was born in the year 2002 and therefore, has no personal knowledge of the facts alleged in the amendment application I.A. No. 6291/2023 for challenging these registered documents. This also evidences that the pleas sought to be incorporated in the plaint by way of amendment application are merely concocted and without any factual basis.

18.10. In view of the above any challenge to the registered documents of 1999 and 2011 would be barred by limitation in the year 2023 even if late Sh. Satish Kumar was alive; and the Plaintiff cannot be in a better position than his

⁵ 2024 SCC OnLine Del 640, at paras 35 and 36.



deceased father. The said amendment application i.e., I.A. No. 6291/2023 cannot be allowed for the reason that the said amendment application if allowed would change the entire character of the suit from a simplicitor suit of partition to a suit for cancellation and declaration of registered documents executed by late Sh. Satish Kumar in 1999. It is trite law that amendments with seek to change the character of the suit are not permissible. [**Re: LIC v. Sanjeev Builders (P) Ltd.**⁶ and **Indupal Kaur Sehgal** (supra)]

18.11. The aforesaid facts also show that the assertion of the Plaintiff at paragraph '11' of the plaint that Plaintiff is in joint possession of the suit property i.e., Property No. A is ex-facie false.

Conclusion

19. The law is well settled that while dealing with an application under Order VII Rule 11 CPC, the Court is to only make resort to the plaint/pleading of the Plaintiff and documents produced by the Plaintiff. The Court has to read the plaint in a meaningful and exhaustive manner and it cannot adopt a formal approach. (Re.: **Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Legal Representatives**⁷; **I.T.C. Limited v. Debts Recovery Appellate Tribunal**⁸; **ITC Ltd. v. Debts Recovery Appellate Tribunal**⁹) and **T. Arivandandam v. T.V. Satyapal**¹⁰).

19.1. In the facts of this case, the documents produced by the Plaintiff and the documents of the Defendants admitted by the Plaintiff shows that late Sh.

⁶ 2022 SCC OnLine SC 1128.

⁷ (2020) 16 SCC 601.

⁸ (1998) 2 SCC 70.

⁹ (1998) 2 SCC 70.

¹⁰ (1977) 4 SCC 467.



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Satish Kumar did not own or possess 504 Sq. Yds. in the suit property i.e., Property No. A at the time of his death in 2019 and therefore, it did not form part of his estate. There was thus, no devolution of interest in favour of the Plaintiff so as to entitle him to maintain this suit for partition of the suit property.

20. The plaint is therefore rejected for being without any cause of action.

21. It appears to this Court that the Plaintiff is aggrieved by the denial of his property rights in the *adjacent* property which is subject matter of CS (OS) 275/2022 and this suit has been filed as a counterblast to the said denial.

22. In view of the above, the suit stands rejected. Pending applications stand disposed of.

23. Interim orders, if any, stand vacated.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

MAY 20, 2025/sk