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

+ RFA 147/2020 & CM APPL. 7727/2020, CM APPL. 13663/2023,
CM APPL. 13664/2023

SHIV KHANNA

.....Appellant

Through: Mr. Shohit Chaudhary, Advocate.

versus

ARUN KHANNA & ORS

.....Respondents

Through: Mr. Ashwin Vaish, Mr .V. Thomas,
Ms. Shubhi Vijaywargiya, Mr. Uttam
Panwar and Mr. Aaditya Sharma,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

01.09.2025

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The court has heard Mr. Shohit Chaudhary, learned counsel appearing for the appellant; as well as Mr. Ashwin Vaish, learned counsel appearing for respondent No.2, at length.

2. All respondents have been duly served.
3. Respondent No.1 has joined (in-person) *via* video-conferencing.
4. No one is present on behalf of respondents Nos. 3 and 4.
5. However, in view of the order that this court proposes to pass, it is not considered necessary to await the presence of respondents Nos. 3 and 4.
6. By way of the present appeal filed under section 96 of the Code of Civil Procedure 1908 ('CPC'), the appellant (plaintiff) impugns order



dated 31.10.2019, by which the plaint filed by the appellant seeking partition of property bearing Plot No. 39 on Road No.71 Class B, Punjabi Bagh, New Delhi, has been rejected by the learned trial court on an application under Order 7 Rule 11 of the CPC filed by respondent No.1 (defendant No. 1), on the ground that the plaint does not disclose any cause of action.

7. Notice on this appeal was issued on 26.02.2020. Notice was also issued on CM. APPL. No.13664/2023 filed by the appellant seeking impleadment of the subsequent purchaser of the suit property; as well as on two other applications bearing CM APPL.No.13663/2023 and CM APPL. No. 7727/2020 seeking certain interim reliefs.
8. Mr. Chaudhary submits, that the learned trial court has erred in deciding the application under Order 7 Rule 11 CPC on the basis of the averments and allegations *contained in the written statement* filed by respondent No.1 (defendant No.1 in the suit).
9. In this behalf, Mr. Chaudhary has drawn attention to paras 7 and 9 of the impugned order, which read as under:

“7. It is stated by defendant no. 1 that earlier various litigations were going on between defendants no. 1 and 2 herein regarding portions B & C of the property, however, the said disputes have already been settled between them in the civil suit bearing no. 612987/16 and also in FAO No. 51/18. It is further stated by the defendant no. 1 that the plaintiff has concealed various material facts from this court. It is stated that defendant no. 1 earlier had filed the probate petition bearing no. 223/03, for grant of probate of registered Will dated 25.02.1985, executed by late Sh. Hira Lai Khanna in favour of defendant no. 1. In the said probate petition, the plaintiff herein (Shiv Khanna) was also party in which he filed his objections on 23.03.2004, categorically stating in the said objections that the entire portion C measuring 362.96 sq. yards



has already been sold by his parents to defendant no. 2 herein, by way of registered sale deed dated 08.03.2000. It is further stated by defendant no. 1 that in view of the averments made by the plaintiff herein in his objections in probate petition no. 223/03, that the portion C has already been sold by his parents to defendant no. 2, the portion C does not remain to be partitioned amongst the LRs of late Sh. Hira Lal Khanna. It is further stated that vide MOU dated 29.06.2006, the probate petition was settled between defendants no. 1 & 2 herein which subsequently on 26.02.2007, was withdrawn by the defendant no. 1 herein. The defendant no. 1 has also denied possession of the plaintiff in the suit property.

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“9. It is settled law that while deciding the applications u/O 7 Rule 11 CPC, only the averments made in the application and the documents annexed with it have to be considered by the court, however, this is also true that the court is not helpless in dismissing the malicious, vexatious and meritless suit at its initial stage. In "*T. Arivandandam Vs. T. Vs. Satyapal & Ors*", AIR 1970 SC 2421, the Hon'ble Supreme Court has held that "on a meaningful, not formal reading of the plaint, the suit was manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, thus the Court should exercise its power under Order VII Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled. It was held that if clever drafting has created the illusion of a cause of action, it should be nipped in the bud, at the first hearing by examining the party searchingly under Chapter X CPC. The Trial Court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage”.”

(underscoring supplied; bold in original)

10. On the other hand, Mr. Vaish, learned counsel for respondent No.2 argues, that as correctly narrated by the learned trial court, a court is not helpless in dismissing malicious, vexatious and meritless suits, as has been held by the Supreme Court in the celebrated decision in *T.*



Arivandandam vs. T. Vs. Satyapal & Ors.¹; and that, in keeping with the law laid down in the said decision, the learned trial court has read the plaint meaningfully and not formally, in an effort to strike-down vexatious and meritless claims.

11. Mr. Vaish has also drawn attention to a recent judgment of the Supreme Court in **The Correspondence, RBANMS Educational Institution vs. B. Gunashekar & Another**;² and in particular to para 14.1. of the said decision, where the Supreme Court has observed as follows:

“14.1. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiffs case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, sub-clauses (a) and (d) are stand alone grounds, that can be raised by the defendant in a suit. However, it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context

¹ (1977) 4 SCC 467

² 2025 INSC 490



of the suit filed based on an agreement to sell against third parties in possession.”

12. Mr. Arun Khanna, who has joined *via* video-conferencing, has raised 02 principal objections :
 - 12.1. *One*, that the present appeal is time-barred; and
 - 12.2. *Two*, that the appellant has admitted to the sale of the suit property in favour of respondent No.2, as has also been narrated in para 7 of the impugned order.
13. These submissions are noted. However in view of the order that this court proposes to pass, these submissions are not material to the decision of the present appeal.
14. In the opinion of this court, the law as re-articulated by the Supreme Court in *RBANMS Educational Institution* has been the consistent position insofar as rejection of the plaint under Order 7 Rule 11 CPC is concerned. In particular, the ground available to a civil court under Order 7 Rule 11(a) CPC is limited in scope, in view of the wording of the provision itself:

11. Rejection of plaint.— *The plaint shall be rejected in the following cases:—*

- (a) where *it* does not **disclose** a cause of action;

(emphasis supplied)

15. It is accordingly the verdict of the Supreme Court in an unbroken line of decisions that:
 - 15.1. *Firstly*, the remit of the court in an application under Order 7 Rule 11(a) CPC is to see whether or not the *plaint(it) discloses* a cause of action; and if that is not the case, a plaint is liable to



- be rejected. To be sure, what the court is required to assess is whether or not the plaint *discloses* a cause of action; and *not* whether a plaintiff *has* (or *does not have*) a cause of action; and
- 15.2. *Secondly*, in order to decide an application under Order 7 Rule 11 CPC, the court must restrict itself *only* to the averments and allegations contained in the plaint; and the defence taken in a written statement is *not* to be looked-into³.
16. Evidently, in the present case the learned trial court did not restrict itself to the aforesaid two aspects, inasmuch as a perusal of paras 7 and 9 of the impugned order as extracted-above, clearly show that while deciding the application under Order 7 Rule 11 CPC, the learned trial court *has considered the contentions, allegations and defences raised in the written statement* filed by the defendants in the suit.
17. In view of the above, after making some submissions, learned counsel appearing for the parties are *ad-idem* that the present appeal may be disposed-of by consent, setting-aside impugned order dated 31.10.2019 and remanding the matter back to the learned trial court, with a direction to the learned trial court to decide the application under Order 7 Rule 11 CPC *afresh*, in accordance with law.
18. It is made clear that this court has not expressed any opinion on the merits of the dispute between the parties; and has only set-aside impugned order dated 31.10.2019, whereby the application under Order 7 Rule 11 CPC was decided by the learned trial court.

³ cf. Madanuri Sri Rama Chandra Murthy vs. Syed Jalal, (2017) 13 SCC 174, para 7



19. Let the matter be placed before the learned trial court on 25th September 2025, on which date the parties shall appear before that court, for the court to set-down a date for reconsideration of the application under Order 7 Rule 11 CPC.
20. The present appeal is disposed-of in the above terms.
21. Pending applications, if any, disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 1, 2025

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