



2025:DHC:8817



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

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Date of Decision: 22.09.2025+ **C.R.P. 103/2025**

SMT. HEMLATA @ BULBUL

.....Petitioner

Through: Mr. B.K Mishra, Advocate

versus

MR. ROHTASH & ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner under Section 115 of the Code of Civil Procedure, 1908 seeking to challenge the Order dated 20.12.2024 passed by the learned District Judge-07, West District, Tis Hazari Court, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application filed by the Petitioner/Defendant No. 2 before the Trial Court has been dismissed by the learned Trial Court.

2. This Court had briefly examined the matter on 08.04.2025 and passed the following directions:

"3. The present Appeal has been filed under Section 115 of the Civil Procedure, 1908 impugning the order dated 20.12.2024 [hereinafter referred to as "Impugned Order"] passed by the learned District Judge-07 (West), Tis Hazari Courts, Delhi. By the Impugned Order, the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) filed by the Petitioner has been dismissed.

4. The Application under Order VII Rule 11 of the CPC sought rejection of the Plaint on the following four grounds:



- (i) Suppression of material facts;
- (ii) Res Judicata;
- (iii) The Plaintiff has no locus standi; and
- (iv) The Lal Dora certificate dated 10.09.2013 is forged.

5. So far as concerns grounds (i), (iii) and (iv), the same do not form part of the grounds for challenge under Order VII Rule 11 of the CPC. A similar finding has been given by the learned Trial Court.

6. The only plea taken by the Petitioner today is that the suit is barred by res judicata. This plea was taken by the Petitioner before the learned Trial Court and has also been adjudicated upon by the learned Trial Court.

7. Learned Counsel for the Petitioner requests for some time to place on record his short note of contentions in the matter.

7.1 Prior to issuing Notice in the matter, this Court deems it expedient to hear the Respondent as well. For this purpose, let a complete set of the paper book be supplied to the Respondent. One copy of the complete set of paper book be also supplied to the learned Counsel who appeared on behalf of the Respondent before the learned Trial Court. An affidavit of service be filed within a week.

8. List on 16.05.2025.”

3. On 16.05.2025, an adjournment request was made on behalf of the Petitioner to comply with the Order dated 08.04.2025.

3.1 Learned Counsel appearing on behalf of the Petitioner today submits that he has restricted his challenge in the present Petition to the ground of no cause of action not *res judicata* as stated earlier.

4. None appears on behalf of the Respondent despite service.

4.1 It is contended by the learned Counsel for the Petitioner that a reading of the plaint shows that the partition has already taken place, thus, the Plaint is liable to be dismissed. Thus, it is contended that the suit which was filed does not reflect any cause of action.

4.2 Learned Counsel appearing on behalf of the Petitioner also submits



that the Petitioner has been wrongly impleaded as a party and that the Plaint *qua* the Petitioner should have been dismissed by the learned Trial Court.

5. The plaint reflects that a suit for partition of property bearing no. 123 measuring about 110 sq. yards falling within Khasra No. 15/1 situated in Tilang Pur Kotal Village, Tehsil Punjabi Bagh, Delhi-110043 [hereinafter referred to as “suit property”] was filed by the Respondent No. 1/Plaintiff. It is the case of the Respondent No. 1/Plaintiff that the Respondent No. 1/Plaintiff and the Defendant No. 1 are real brothers and the Petitioner/Defendant No. 2 is the widow and the nephew of the Respondent No. 1/Plaintiff and the daughter-in-law of the Defendant No. 1.

5.1 The plaint further sets out that the Respondent No. 1/Plaintiff being a co-owner is in constructive possession having half undivided share in the suit property. The suit property is a two-storey built up house. The entire property has accommodation of three rooms, hall and open kitchen at ground floor and three rooms, kitchen, storeroom and open angan at first floor with other desired facilities.

5.2 The plaint also sets out that the Respondent No. 1/Plaintiff and the Petitioner/Defendant No. 2 acquired the suit property from their father Shri Trilok Chand during his life time and thereafter they jointly got the suit property mutated in their names with Revenue Department, Executive Magistrate (Punjabi Bagh) and the said authority issued the Lal Dora Abadi Deh Certificate dated 10.09.2013 for the suit property in favour of Respondent No. 1/Plaintiff and Petitioner/Defendant No.2.

5.3 The plaint further states that there was a mutual understanding



amongst the Respondent No. 1/Plaintiff and the Defendant No. 1 that the Defendant No. 1 with his family which includes Petitioner/Defendant No. 2 and her children will use ground floor and the Respondent No. 1/Plaintiff will use the first floor of the suit property.

5.4 In addition, it is contended in the Plaint that on 25.06.2019, it has come to the knowledge of the Respondent No. 1/Plaintiff that the Defendant Nos. 2 and 3 have trespassed in the portion of the suit property which belongs to the Respondent No. 1/Plaintiff, claiming to be owners of that portion of the suit property. The Plaint, in addition, goes on to read that since the disputes were *inter se* siblings, peaceful resolution was first sought and after finding no alternative, a police complaint was made on 27.06.2019 as well in this regard.

5.5 The plaint further sets out that since both the Respondent No. 1/Plaintiff and the Defendant No. 1 are owners and in possession, the Respondent No. 1/Plaintiff is entitled to use half undivided share in the suit property. Thus, the suit for partition has been filed.

5.6 The relevant paragraphs of the plaint are reproduced below:

*“2. That, plaintiff and defendant no. 1 are real brothers and sons of Lt. Sh. Trilok Chand. On the other hand, defendant no. 2 is **widow of real nephew of plaintiff and daughter-in-law of defendant no. 1.** Defendant no. 3 is the brother of defendant no. 2. Defendant no. 4 and 5 are the children of Defendant No. 2.*

*3. **That, the plaintiff being co-owner in constructive possession, having joint and equal ownership of ½ undivided share in the property bearing no. 123 measuring about 110 sq. yards falling within Khasra No. 15/1 situated in Tilang Pur Kotla Village, Tehsil Punjabi Bagh, Delhi-110043, which has been more specifically shown in the site plan attached herewith (hereinafter called the suit property).** The said house*



build/plot is surrounded on the following four sides as under:-

East House of Sh. Sultan
North: Gali (Street)

West: House of Sh. Sirya Singh
South: House of Sh. Jai Pal

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5. That, the plaintiff and defendant no. 1 had acquired the suit property from their father Lt. Sh. Trilok Chand during his lifetime. Later on, after the demise of plaintiff's parents, plaintiff & defendant no 1 jointly registered the suit property in their favour at Revenue Department, Executive Magistrate (Punjabi Bagh) Nangloi, Delhi and the said authority issued the Lal Dora Abadi Deh Certificate bearing no. F.1(1) / SDM (PB) Lal Dora /2012/47 dated 10.09.2013 for the suit property in the favour of plaintiff and defendant no. 1. The said certificate established that persons are the owner of a particular property/land in the "Abadi" area of a village (i.e. area demarcated for habitation). The copy of the abovesaid Lal Dora Certificate bearing no F.1(4) SDM(PB) Lal Dora/2012/47 dated 10.09.2013 is filed along with the present suit.

6. That, there was mutual consent/understanding between plaintiff and defendant no. 1 that the defendant no. 1 with his family which includes defendant no. 2 and her children will use ground floor and plaintiff will use the first floor of the suit property for the purpose of residence only. Then, accordingly plaintiff and defendant no. 1 took over the possession of their agreed respective portion in the suit property since then, plaintiff and defendant no. 1 along with their family had been in the possession of the entire suit property. At that time no care to provide separate entry & exits to each portion was taken. The problem to proper partition such developed property were left in the hand of future successors to deal as per their own wisdom and tolerance.

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8. That, apart from the defendant no. 1, other 4 real elder brothers and 2 sisters of the plaintiff are residing and well settled at their respective property which was also acquired by them through their father during his lifetime.

9. That, on 25.06.2019, it has come to the knowledge of plaintiff that defendant no. 2 and 3 jointly in absence of plaintiff had broken the lock of all the three rooms, a kitchen and a storeroom at first floor of the suit property which belongs to the plaintiff and forcibly entered into the portion of the plaintiff in the suit property as a trespasser/encroacher



and they falsely claimed themselves to be the owners of the said property. When the plaintiff approached defendants asking his legal and valid share in the property, he was shocked and surprised to see the conduct and act of the defendants and they paid no heed to the genuine and legal requests of the plaintiff, however, the defendant no. 2 to 5 did not allow the plaintiff to enter into the suit property and threatened the plaintiff that he cannot do anything against them as they have high links with the gunda elements of the locality and defendant no. 2 & 5 being a woman would put false accusation against the plaintiff.

10. That, plaintiff requested to his other real brothers and sisters to intervene in the abovesaid dispute and help him out, as this is the dispute between the relatives, plaintiff wanted to resolve the matter amicably and peacefully. Plaintiff being a youngest one among all his brothers sought the help from his brothers & sisters to conciliate the matter but ultimately they refused to interfere in the dispute due to the threats made by defendants to involve everyone, in false accusation charges whosoever came to talk with them regarding this dispute.

11. That, finding no other alternative solution, plaintiff lodged written complaint to the police at P.S. Ranhola, Delhi vide No. 40-B, dated 27.06.2019 and thereafter also wrote several complaints which were made to the higher authorities of And Office of SDM by the plaintiff, but all went in vain. Authorities also refused, to take any legal action or initiate investigation against defendant no. 2 to 5 by stating ... present dispute comes under purview of civil court of law. Copy of the written complaint vide DD No. 40-B, dated 27.06.2019 is filed along with the present suit.

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17. That, since plaintiff and defendant no. 1 are owner in possession, having joint and equal ownership of undivided share in the property bearing no. 123 measuring about 110 sq. yards falling within khasra no. 15/1 situated in Tilang Pur Kotla Village, Tehsil Punjabi Bagh, Delhi-110043. Thus, the plaintiff is entitled to ½ share in the suit property, thereby entitling the plaintiff to ½ undivided and un-partitioned share in the suit property.

18. That, it is stated that the suit property is still undivided and un-partitioned and plaintiff & defendant no. 1 are having legal and valid share in the suit property. The plaintiff is thus, the owner in possession. Having joint and equal ownership of ½ undivided share in the suit property, having an undivided and un-partitioned share in the said suit



property which was owned by Late Sh. Trilok Chand for the benefit of the family. Hence, the plaintiff is very much entitled for partition of the suit.” Property along with actual physical possession thereof in accordance of law.

19. That it is submitted that the suit property is still a joint property of the plaintiff and the defendant no. 1. in which even the plaintiff is owner of the ½ undivided share. Despite being joint and co-owner of the suit property, the plaintiff is being deprived of his share and his demand of partition has been deliberately and knowingly refused by the defendants, hence the present suit.

20. That, the defendants are presently residing in the suit property. Also, the plaintiff is in the constructive possession of the property being one of the co-owners of the suit property since, the defendant no. 1 being the co-owner of the property is in physical possession of the suit property, plaintiff is also having, constructive possession in the suit property.”

[Emphasis supplied]

6. After setting out a detailed narration of sequence of events, the plaint in paragraph 24 sets out the cause of action which reads as follows:

“24. That, the cause of action arose to file the present suit arose in favour of the plaintiff and against the defendants at Delhi somewhere in the year 2013 when plaintiff and defendant no. 1 registered the suit property in their favour at Revenue Department, Executive Magistrate (Punjabi Bagh) Nangloi, Delhi and the said authority issued the Lal Dora Certificate bearing no. F.1(1)/SDM(PB) Lal Dora/2012/47 dated 10.09.2013. It further arose on 25.06.2019, when defendant no. 2 and 3 jointly in absence of plaintiff & defendant no. 1 had broken the lock of all the three rooms, a kitchen and a storeroom at first floor of the suit property which belongs to the plaintiff and forcibly entered into the portion of the plaintiff in the suit property as a trespasser/encroacher. The cause of action further arose on 27.06.2019, when plaintiff lodged the written complaint to the police at P.S. Ranhola, Delhi vide DD No. 40-B, and on different occasions when several written complaints were made to the higher authorities of police and SDM (Punjabi Bagh) by the plaintiff. It further arose on different occasions, when defendants refused to partition the suit property as asked for by the plaintiff and denied by the defendants. The cause of action further arose when the plaintiff sent the legal notice dated 17.07.2019 to the defendants seeking partition of the suit property. It



further arose on different occasions when the defendants threatened the plaintiff that they will create the third party interests in the suit properties with the sole motives of depriving the plaintiff of her share. The cause of action, still continues to exist as the suit property is still undivided and un-partitioned.”

7. It is settled law that 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 VII Rule 11 of the CPC. Whether the plaint discloses a cause of action is essentially a question of fact which is determined on the basis of averments made in the plaint in its entirety taking those averments to be correct. While assessing whether a plaint discloses a cause of action, the Court is only required to examine whether the cause of action is such which necessitates determination by the Court and not whether the plaintiff will actually succeed in the suit or not. Therefore, to set out a cause of action in a plaint, only material facts are required to be stated and not the evidence.. This position of law has been crystallised by the Supreme Court in ***Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express***¹. The relevant extract of which is set out herein below:

“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

¹ (2006) 3 SCC 100



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. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

[Emphasis Supplied]

8. As stated above, this aspect, although taken by the Petitioner/Defendant No. 2 in her Application, the Petitioner/Defendant No. 2 had before the learned Trial Court addressed four other grounds, which have been discussed in paragraph 2 above, these have already been dealt with by this Court on 08.04.2025. The learned Trial Court has examined the plaint and found that a cause of action has been reflected in the plaint and the Court is bound to presume the contents of the plaint to be correct. The relevant paragraphs of the Impugned Order in this regard are set out below:

*“6. In a nutshell, **the plaintiff has taken the plea that he is the owner of the first -floor of the suit property and the defendants have unlawfully trespassed** therein. Before concluding the recording of the averments of the plaint, it is also relevant to note down that in para 18, 19 and 20 of the plaint, **the plaintiff has specifically taken the plea that the suit property is still undivided and unpartitioned and he and defendant no. 1 are having undivided share in the suit property and he is in the constructive possession of the same.***

*7. This Court has highlighted the aforesaid pleas of the plaintiff as he has taken inconsistent pleas in his plaint, on the one hand, he is claiming that as per their mutual understanding the first floor of the suit property falls in his share and ground floor in the share of defendant no. 1 and **his family members, while on the other hand, he has taken the plea that the suit property is still unpartitioned and he is in the constructive possession of the same as a co-owner.***



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13. Fourthly, the applicant has taken the plea that there is no cause of action in favour of the plaintiff to file the present suit against the defendants. The said ground also deserves rejection as the plaintiff has claimed himself to be the co-owner of the suit property and at the stage of adjudication of an application under Order VII Rule 11 CPC this Court is bound to presume the contents of the plaint to be correct. Accordingly, the plea of the defendant no.2 stands rejected.”

[Emphasis Supplied]

9. The learned Trial Court has found that the suit does disclose a cause of action. An examination by this Court does not show otherwise. There is a clear and distinct cause of action is reflected from the plaint as is set out above. Since an Application under Order VII Rule 11, CPC has to be decided on a demurrer, on a review of the plaint and the documents annexed with the plaint, given the fact that the Respondent No. 1/Plaintiff has disclosed the cause of action this Court finds no infirmity with the Impugned Order on this aspect either.

10. So far as concerns the second contention of the learned Counsel for the Petitioner, it is without merit as well. It is settled law that a Plaint cannot be dismissed in part. If aggrieved, the Petitioner could file appropriate proceedings in accordance with law, for deletion of his name from the array of parties or other proceedings as available in law.

11. The revisionary jurisdiction of this Court is limited. The Supreme Court in the case of *Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors*² has clarified that unless the Petitioner is able to show non-exercise of jurisdiction or exercise of jurisdiction by the Trial Court is

² (2017) 14 SCC 132



not in accordance with law, no order under Section 115 of CPC can be passed. The Supreme Court has further clarified that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. The relevant extract is below:

*“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. **It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.**”*

[Emphasis Supplied]

12. The Petitioner has failed to make out any grounds for interference with the Impugned Order. The Petition is, accordingly, dismissed with token costs in the sum of Rs. 5,000/- payable by the Petitioner/Defendant No. 2 directly to the “DHCBA Cost A/c No. 15530110179338”.

13. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 22, 2025

g.joshi/ha