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

% ***Date of Decision: 10.07.2025***

+ **C.R.P. 195/2025 & CM APPL. 40278/2025**

BINA ARORA

.....Petitioner

Through: Mr. Kush Mudgal, Advocate.

versus

SUNIL KUMAR ARORA AND ORS.

.....Respondents

Through: Mr. Kumar Bhaskar, Advocate.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to challenge an order dated 17.03.2025 passed by the learned District Judge-04, Patiala House Courts, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11, CPC has been dismissed by the learned Trial Court finding that the suit is not barred by limitation as has been averred by the Petitioner.

2. The learned Trial Court has given a finding that the facts briefly are that the suit for partition was filed by the Respondents/Plaintiffs seeking his share in the property of his deceased father. The Plaintiffs and the Defendants are *inter se* family members.

3. It is the case of the Respondents/Plaintiffs that the property belonged



to the father of the parties, who purchased the property in the year 1971 with his own funds. It is further the case of the Respondents/Plaintiffs that the Respondents and Petitioner are in joint possession of the property as co-owners of the property since long.

4. The plaint further sets out that the Respondents/Plaintiffs have been asking for a partition from time-to-time and however, since this has been denied by the Petitioner, the suit has been filed.

5. Learned Counsel for the Petitioner submits that the plaint is barred by limitation in terms of Article 110 of Schedule 1 of the Limitation Act, 1963. He submits that the cause of action arose in the year 2006 and thus, the suit filed in 2019 is barred by limitation.

6. The contentions that are being argued before this Court were also argued before the learned Trial Court. The learned Trial Court gave a finding that the suit would not be barred by limitation. Relying on Paragraph 19 of the plaint, it has been pleaded that the Defendant has continued to reside in the suit property and the Plaintiff was assured of the share of each of the brothers and sisters eventually being distributed when anyone sought partition.

7. The learned Trial Court has also found that the Plaintiff has clearly pleaded in Paragraph 12 of the plaint that he had sent a legal Notice dated 29.08.2018 seeking partition which was refused. The learned Trial Court has also given a finding that the right to sue would accrue when the Plaintiff had noticed that his entitlement to the partition was denied.

8. Learned Counsel for the Respondents seeks to rely upon a judgment of the Supreme Court in *Vidya Devi alias Vidya Vati (Dead) by LRs v.*



Prem Prakash and Others¹ to submit that the period of limitation shall commence from the date that the partition has been refused and since the partition was refused in the year 2018 when the legal Notice was sent by the Petitioner/Defendant to the Respondents/Plaintiffs.

9. The Supreme Court in the ***Vidya Devi*** case has held that no period of limitation has been prescribed by the Legislature for filing a suit for partition as partition is an incident attached to the property. There is always a running cause of action for seeking partition by one of the co-sharers, when such co-sharer decides not to keep his share joint with other co-sharers. The Court explained that filing of a partition suit is wholly dependant upon the will of the co-sharer and it is because of this reason, the Legislature could not have possibly provided the period of limitation in partition suits. The relevant extract of the ***Vidya Devi*** case is set out below:

“20. The legislature has not prescribed any period of limitation for filing a suit for partition because partition is an incident attached to the property and there is always a running cause of action for seeking partition by one of the co-sharers if and when he decides not to keep his share joint with other co-sharers. Since the filing of the suit is wholly dependent upon the will of the co-sharer, the period of limitation, specially the date or time from which such period would commence, could not have been possibly provided for by the legislature and, therefore, in this Act also a period of limitation, so far as suits for partition are concerned, has not been prescribed. This, however, does not mean that a co-sharer who is arrayed as a defendant in the suit cannot raise the plea of adverse possession against the co-sharer who has come before the court as a plaintiff seeking partition of his share in the joint property.

21. Normally, where the property is joint, co-sharers are the representatives of each other. The co-sharer who might be in possession of the joint property shall be deemed to be in possession on behalf of all the co-sharers. As such, it would be difficult to raise the plea of adverse possession by one co-sharer against the other. But if the co-sharer or the joint owner had been professing hostile title as against other co-sharers openly and to the knowledge of other joint owners, he can, provided the

¹ (1995) 4 SCC 496



hostile title or possession has continued uninterruptedly for the whole period prescribed for recovery of possession, legitimately acquire title by adverse possession and can plead such title in defence to the claim for partition.”

[Emphasis supplied]

10. The Petitioner in his Application under Order VII Rule 11 of the CPC has extracted paragraphs of the plaint as well as the reply to the legal notice sent by the Respondent/Plaintiff to contend that the Respondent/Plaintiff has failed to mention any date, time or place when the cause of action arose in his favour. The Petitioner’s reproduction of the paragraphs of the plaint sets out several dates when the cause of action could have arisen. These are disputed questions of fact and could only be ascertained once the trial of the matter is held. It is settled law that the question of limitation is a mixed question of fact and law since, an Application under Order VII Rule 11 of the CPC can only be decided on a demurrer. From a reading of the plaint, unless there are glaring averments in the plaint which show that a suit is barred by limitation, the Court will not be inclined to dismiss a suit on the ground of limitation at threshold.

10.1 In ***Balasaria Constructions (P) Ltd v. Hanuman Seva Trust and Others***² held that a suit cannot be barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence as the question of limitation is a mixed question of fact and law. The relevant extract of ***Balasaria Constructions*** case is set out below:

*“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, **we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a***

² (2006) 5 SCC 658



***mixed question of law and fact.** Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.”*

[Emphasis Supplied]

10.2 A Co-ordinate Bench of this Court in ***Brigadier (Retd.) Shyam Prasad v. Dayavati & Ors.***³ while relying upon ***Mayar*** case and ***Balasaria Construction*** case dealt with the issue of limitation in a partition suit. The Court affirmed the position as set out above and reiterated that the question of limitation is a mixed question of law and fact which can be decided only after the evidence of the parties and a plea of limitation cannot be accepted at the stage of Order VII Rule 11. The relevant extract of ***Brigadier (Retd.) Shyam Prasad*** case is set out below:

*“27. In the present case, the nature of the pleadings in the plaint being what it is, **this Court does not agree with the contentions of defendant No. 1 that the action is time barred as the question of limitation is a mixed question of law and fact which can be decided only after the evidence of the parties. Moreover under Order VII Rule 11, only the allegations in the plaint are to be looked into and plea of limitation cannot be accepted at this stage.** Therefore, I am of the view that all the pleas raised by the defendant No. 1 in her application and the averments made by her in the written statement cannot be decided at the pre-trial stage without recording the evidence in view of the facts and circumstances of the present case.”*

[Emphasis Supplied]

11. However, limitation being a mixed question of facts and law would be required to be adjudicated only when such facts are pleaded in the plaint which would entail such an enquiry. However, no such facts have been pleaded by the Respondent.

12. In view of the foregoing discussions, this Court finds no infirmity

³ 2010 SCC Online Del 145



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with the Impugned Order.

13. The Petition is accordingly dismissed. The pending Application also stands closed.

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

TARA VITASTA GANJU, J

JULY 10, 2025/pa/r