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

+ RFA 502/2024 & CM APPL. 45506/2024

SARAT KUMAR SHARMAAppellant
Through: Mr. Sanchit Garga, Adv.

versus

ANITA SHARMA & ORS.Respondents
Through: Mr. Vijayender Kumar, Advocate via
video-conferencing for R1 & 2.
Mr. Nikunj Jain, Advocate for R3 &
4.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

07.05.2025

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By way of the present appeal filed under section 96 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns order and decree dated 05.07.2024 passed by the learned District Judge-02, North-West District, Rohini Courts, Delhi in civil suit bearing CS DJ No.346/2024, whereby the learned trial court has rejected the plaint under the provisions of Order VII Rule 11 CPC, holding that "*if plaintiff does not have any cause of action to file the suit, the court is duty bound to reject the plaint.*" The appellant was the plaintiff in the suit; and the respondents were the defendants.

2. Notice on this appeal was issued on 11.12.2024.
3. The respondents are represented by counsel in the matter.
4. The court has heard Mr. Sanchit Garga, learned counsel appearing for the appellant; Mr. Vijayender Kumar, learned counsel for respondents



Nos.1 and 2; as well as Mr. Nikunj Jain, learned counsel for respondents Nos.3 and 4.

5. Briefly, the plaintiff is one of the sons of Ram Swarup Sharma (respondent No.5, since deceased); and respondent No.1 is the daughter-in-law, respondent No.2 is the other son and respondents Nos.3 and 4 are the two daughters of Ram Swarup Sharma.
6. For clarity, it may be mentioned that at the stage when the suit was filed before the learned trial court, Ram Swarup Sharma was alive. He is stated to have passed-away on 12.09.2024 during the pendency of the present appeal, as recorded by the learned Joint-Registrar in order dated 20.12.2024, in which order it is also mentioned that the legal representatives of respondent No.5 are already arrayed as appellant and respondents Nos.1 to 4 in the present proceedings.
7. Mr. Garga appearing for the appellant submits, that as would be seen from a perusal of the plaint, it was the appellant's contention that though the suit property bearing No. C-3/101, Ashok Vihar, Phase-II, Delhi stood in the name of Ram Swarup Sharma, the appellant had contributed to the purchase and construction of the suit property, including by paying the premium for conversion of the suit property from leasehold to freehold by way of Conveyance Deed dated 11.02.2000, by which the property came to stand in the name of Ram Swarup Sharma.
8. Counsel submits, that as would also be seen from a perusal of the plaint, the appellant was seeking annulment of Gift Deed dated 05.12.2022 purportedly executed by Ram Swarup Sharma in favour of



respondent No.1 (who was defendant No.1 in the suit) on various counts.

9. In the circumstances, counsel points-out that he had claimed the following reliefs in the plaint :

- “(a) That by a decree of declaration be passed in favour of the Plaintiff and against the defendant number 1, thereby, declaring the registered Gift Deed executed by Shri Ram Swarup Sharma (Defendant No. 5) in favour of defendant number 1, which is registered with the office of Sub Registrar V, New Delhi at registration number 19,480 in Book Number 1 Vol No. 11,337, at Pages 66 to 73 on 05.12.2022, be declared as null, void and non est in law.*
- (b) That by a decree of permanent injunction be passed in favour of the plaintiff and against the defendant number 1 and 2 restraining the defendant, his agents, servants, employees from alienating, transferring, selling the demised premises which consist of Ground Floor, First Floor and Second Floor on plot bearing no. C-3/101 Ashok Vihar, Phase-II, Delhi-110052, the boundaries of which are mentioned at the foot of the plaint;*
- (c) That by a decree of permanent injunction be passed in favour of the plaintiff and against the defendant number 1 and 2 restraining the defendant, his agents, servants, employees from dispossessing the Plaintiff from the Second Floor on plot bearing no. C-3/101 Ashok Vihar, Phase -II, Delhi-110052, the boundaries of which are mentioned at the foot of the plaint and also restrain the defendants, his agents, servants, employees from interfering in the peaceful possession of the plaintiff ;*
- (d) to pass a preliminary decree of partition in favour of the plaintiffs to the extent of 20% and against the defendants in respect of C-3/101 Ashok Vihar, Phase - II, Delhi-110052 and after passing the preliminary decree, a local commissioner be appointed to give report for the mode of partition in the suit property and on the basis of the local commissioner report, a final decree be passed accordingly to*



the extent of PLAINTIFF's share in the property

- (e) *That such other relief, as this Hon'ble Court may deem, think, fit and proper may kindly be awarded to the plaintiff against the defendant.*
- (f) *That the costs of the suit be awarded to the plaintiff against the defendant."*

10. It is argued however, that without even issuing summons in the suit and without there being any application by any of the defendants seeking rejection of plaint, and in *suo-motu* exercise of the powers under Order VII Rule 11 CPC, the learned trial court has rejected the plaint with the following observations :

"The aforesaid clearly shows that defendant no.5 is the owner of the property. By giving money, no one can become an owner of immovable property. For becoming owner of immovable property for more than Rs.100/-, the registered sale deed is a necessity. It is not the claim of the plaintiff that he has any such document in his favour. By making contribution in construction or otherwise, a property can never be converted into HUF property. Existence of Hindu Undivided Family is a different thing than existence of coparcenary property. Only in an coparcenary property that sons and daughters can claim any right along with their father. The instant property is self acquired property (sic, property) of father and has not devolved on him through any ancestral. Therefore, till the time defendant no.5 is alive, no one else can claim any right in the said property.

"It is clear that the plaintiff is not a co-sharer of property in question and therefore, he can not file any type of suit for partition.

*Order 7 Rule 11 CPC says that if plaintiff **does not have any cause of action to file the suit, the court is duty bound to reject the plaint.** In the present case, the plaintiff does not have any right to sue for partition because he has no right on the property as a co-sharer. Clearly there is absence of cause of action which will attract Order 7 Rule 11 CPC.*



Consequently, this plaint is rejected. Decree be prepared accordingly.”

(emphasis supplied)

11. Counsel submits, that clearly therefore the learned trial court has failed to appreciate that the appellant was claiming a declaration that the gift deed was *null and void* based on certain contentions, which were required to be considered on merits; and, besides, the other reliefs of permanent injunction and partition could very well have been claimed by the appellant even during the lifetime of his father.
12. It is argued that, in any case, on point of law, the plaint could not have been rejected with the observations that the appellant *did not have* a cause of action.
13. Learned counsel appearing for respondents Nos.1 and 2 have argued that the learned trial court was correct in observing that merely because a person has contributed to the construction or acquisition of property, does not mean that such person acquires a title to the property. Counsel for the respondents submit, that even making contribution towards the property does not imply that it becomes the property of a Hindu Undivided Family. Counsel however have no answer to the appellant's contention that his claim seeking annulment of the gift deed has not been addressed in the impugned order at all.
14. Upon considering the submissions made by learned counsel appearing for the parties, and on a perusal of the impugned order, it is clear that the order is flawed on the following counts :
 - 14.1. The impugned order proceeds without considering that the appellant had sought the reliefs of annulment of the gift deed,



permanent injunction as well as partition of the property, which claims required a response from the respondents and could not have been decided without issuing summons in the suit;

14.2. The impugned order also proceeds on the basis that the power under Order VII Rule 11 CPC can be exercised if the court comes to the conclusion that the “*plaintiff does not have any cause of action to file the suit*”, failing to appreciate that Order VII Rule 11(a) of the CPC empowers the court to reject a plaint where the plaint “*does not disclose a cause of action*”. It is settled law that a plaintiff not *having* a cause of action is distinct from a plaintiff failing to *disclose* a cause of action in the plaint;

14.3. In the present case, evidently the appellant (plaintiff) was canvassing a cause of action for annulment of the gift deed citing various reasons for that, as detailed in the plaint; and it was the appellant’s contention that once the gift deed is annulled, the other reliefs claimed, namely for permanent injunction and partition would also be made-out; and

14.4. Whether or not the appellant was to succeed on merits could *not* have been pre-judged or foreclosed by rejecting the plaint at the very threshold, without issuing summons in the suit.

15. In view of the above, the appeal is allowed, thereby setting-aside impugned order dated 05.07.2024; and the matter is remanded back to the learned trial court, to consider and decide the same on merits, in accordance with law.



16. Let the matter be placed before the learned trial court on 26th May 2025, on which date parties are directed to remain present or be represented before that court.
17. Let copy of this order be sent to the learned trial court, at least 01 week before the date given for appearance of the parties.
18. The appeal is disposed of in the above terms.
19. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 7, 2025

V.Rawat