



2025:DHC:8052



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

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Date of Decision: 25.08.2025

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C.R.P. 219/2025 & CM Appl. 45664/2025

SUMITRA

.....Petitioner

Through: Mr. Arun Sharma and Mr. Sandeep
Tyagi, Advs.

versus

TEJVEER SINGH KARDAM

.....Respondent

Through: None.

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

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] impugning the order dated 10.07.2025 passed by the learned District Judge-04, South District, Saket Courts, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC has been dismissed by the learned Trial Court.

1.1 None appears for the Respondent despite advance service.

2. The only ground that is raised by the Petitioner before this Court is that the suit is barred by limitation under Article 65 of the Schedule to the Limitation Act, 1963 [hereinafter referred to as "Limitation Act"].

3. Learned Counsel for the Petitioner submits that as per the plaint the possession of the Respondent/Plaintiff has become adverse to the Petitioner in the year 2006 and thus, the suit is barred by limitation.



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4. A similar contention was raised by the Petitioner before the learned Trial Court. The learned Trial Court however, relying upon the judgment of the Supreme Court in *Narne Rama Murthy v. Ravula Somasundaram*¹ held that it is only when limitation is a pure question of law only then would an Application under Order VII Rule 11 of the CPC be decided. It held that a plaint cannot be rejected where limitation is a mixed question of fact and law.

4.1 The Impugned Order further holds that the cause of action in the present case arose when the Defendant/Petitioner declined to vacate the suit premises and stated that the property belongs to them; and that the question that whether possession was already adverse in 2001 or on any other date and in reference to that when the period of limitation actually began is a mixed question of fact and law. It is apposite to set out the relevant extract of the Impugned Order as below:

“Perusal of plaint shows that plaintiff in cause of action para has stated that the cause of action arose when defendant declined to vacate the premises and stated that they themselves are the owners of the same.

Limitation for filing of suit for Possession is 12 years from the date when possession become adverse.

As per the plaint the cause of action arose on 27.06.2024 when defendant refused to vacate the suit property and stated that it belongs to them.

Counsel appearing for defendant had stressed on the point that *as the property has been in possession of defendant no.1 since 2001, the suit is time barred.*

A perusal of Limitation Act, 1963 shows that Article 65 of the Act provides that 'limitation period for filing a suit for Possession of *immovable property* is 12 years and the period begins to run when the possession of the defendant become adverse to the plaintiff.

As per the plaint, defendant claimed title of the property in denial of plaintiff's

¹ (2005) 6 SCC 614



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*title on 27.06.2024. Suit is filed in same year. The **question that whether possession was already adverse in 2001 or on any other date 12 years before the date of filing of suit is a mixed question of fact and law.** Hence, this court is of the considered opinion that plaint does not deserve to be rejected under Order VII Rule 11 CPC, as the issue of limitation in the present case is a mixed question of fact and law. The application is accordingly dismissed.”*

[Emphasis supplied]

4.2 The learned Trial Court in these circumstances found that limitation in the present case is a mixed question of fact and law and whether the possession of the Respondent/Plaintiff was already adverse in the year 2006 or was adverse in the year 2017 as is set out from the plaint would require evidence to be led.

5. As stated above, the learned Counsel for the Petitioner has contended that the plaint is barred by limitation since the possession of the Petitioner/Defendant became adverse to the Respondent/Plaintiff in the year 2001. This is however not borne from the Plaint. The Plaint sets out in detail as to how the property belongs to the Respondent/Plaintiff and the Petitioner/Defendant, his brother and family was allowed to reside out of love and affection. It further states that after his brother died in 2017, various requests were made by the Respondent/Plaintiff to the family of his brother to vacate the subject property and since these were not heeded to, the suit filed. It is apposite to set out the relevant extract of the Plaint as below:

*“3 That out of love and affection and request of the brother of the Plaintiff namely Late Sh. Amarjeet Singh, **the Plaintiff allowed the defendants to reside in the Suit property for a short period till they find a suitable accommodation.***

4. BRIEF FACTS OF THE CASE:

*a) That the Plaintiff is the owner of the Suit Property by virtue of GPA, Agreement to Sell, Will, Affidavit, Receipt Dated 05.11.1990, w.r.t. Suit Property executed by its earlier **owner Sh. Rattan Lal S/o Late Sh. Khacheru***



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R/o VPO Chhatarpur, New Delhi, in favour of plaintiff & defendants. That the Plaintiff could not construct the aforesaid property immediately due to lack of funds.

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e) That the younger brother of the plaintiff Amarjeet Singh & his wife (Defendant No.1 herein) were residing at Village Dayalpur, Faridabad, and it was difficult **for them to commute to their offices at New Delhi, therefore they requested the Plaintiff to allow them to reside in his suit property and stated that they would vacate the Suit Property** as soon as they would find a suitable accommodation.

f) **That considering the request of his brother and Defendant No.1 herein, the Plaintiff allowed them to reside in the Suit Property for a short period, in First half of 2005, with the** condition that they would immediately vacate the suit property as soon as they find a suitable accommodation for themselves.

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i) That in **2006, the younger brother of the plaintiff Amarjeet Singh purchased a Flat bearing No. 119 Pocket I in Jai Hind Apartments, Sector 2, Dwarka. New Delhi-110075, and furnished the same but did not shift there as promised by them to the Plaintiff.** Moreover Sh. Amarjeet also purchased two more properties in **Ghaziabad & Noida**, the details of the same are known to the defendants.

j) That as soon as the Plaintiff came to know about the said Purchase of aforesaid Property by Sh. Amarjeet Singh, Brother of the Plaintiff, the plaintiff requested his **younger brother Amarjeet Singh & his wife (Defendant No.1 herein) to vacate the suit property but he did not** pay heed to the same.

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l) That the younger brother of the Plaintiff namely Amarjeet Singh **died on 09.07.2017 due to Heart Attack in Max Hospital, Saket. That all the Last Rituals of Late Amarjeet Singh were conducted at the native Village Dayalpur, Faridabad, Haryana. That Amarjeet Singh is survived by Defendant No.1 (Wife), Defendant No.2 (Son) & daughter Smt. Sakshi (Married in March 2022 and resides nearby to Suit Property).**

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6. The cause of action arose in favour of plaintiff and against the defendants when the younger brother of the Plaintiff, Amarjeet Singh was not well, the Plaintiff along with **his family visited him in March 2017, wherein Amarjeet Singh stated that he would vacate the Suit Property and shift to his Property in Dwarka, New Delhi.**



7. The cause of action arose in favour of plaintiff and against the defendants in July 2018 on the First Death Anniversary family function of Late Sh. Amarjeet Singh, when the Plaintiff again requested the defendants to vacate the suit property but he did not pay heed to the same despite the assurances given by the younger brother of the Plaintiff Late Sh. Amarjeet Singh, the Defendants failed to vacate the Suit Property. Moreover the defendants were intended to throw the Mother of the Plaintiff Smt. Anar Devi, out of the Suit Property, but after intervention of the Plaintiff & family members, the Mother of the Plaintiff Smt. Anar Devi stayed in the Suit Property.

8. The cause of action arose in favour of plaintiff and against-the defendants when on 26.02.2023, the Plaintiff and his family went to the Suit Property and asked them to vacate the Suit Property but the intention of the defendants was to grab the Suit Property by hook or crook & not to return the same to-the Plaintiff and therefore the Defendants threw out the mother of the Plaintiff 26.02.2023, Smt. Anar Devi and filed a False FIR No. 135/2023, PS: Mehrauli, U/s 323/325/354B/34 IPC against the Plaintiff and his family.

9. That the cause of action arose in favour of plaintiff and against the defendants when on 27.06.2024, during the Court hearing of the aforesaid case, in the presence of family members, the Plaintiff again requested the defendants to vacate the Suit Property as per their promise and assurances but they flatly refused for the same and stated that it belongs to them, moreover they threatened the plaintiff and his family members.”

[Emphasis Supplied]

6. It is settled law that Order VII Rule 11 of the CPC requires for a decision on demurer. Where from a plain reading of the plaint, it appears that limitation is a mixed question of fact and law, the plaint cannot be said to be barred. The learned Trial Court while examining this aspect held as follows:

“As per the application, suit is time barred and hence hit by Order VII Rule 11 (d) CPC. It is stated that the contents of Paras of the written statement be read as part and parcel of this application. It is stated that defendant no. I was residing in the suit property since 2001 till her husband's death in the year 2017 and is still in the possession for the past 24 years. The suit is time barred and liable to be dismissed with cost.

Reply to the aforesaid application has been filed. In the reply, all the contents of the application have been denied.

Arguments heard. Record perused.



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Order VII Rule 11 CPC read as follows.

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

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule.*

It is evident from the bare reading of this Order that a suit can only be dismissed under Order VII Rule 11 CPC, if it falls in any of the above mentioned clauses.

In Narne Rama Murthy Vs. Ravula Somasundaram (2005) 6 SCC 614 Hon'ble Supreme Court of India has held, "When limitation is a pure question of law and is visible from the pleadings itself, it becomes clear that the suit is barred by limitation. Then, of course, it is the duty of the court to decide the question of limitation at the outset even in the absence of a plea. But where the question of limitation is a mixed question of fact and law out of the suit and it does not appear to be barred by law on the face of it, then the issue of limitation has to be framed and proved. ""

[Emphasis supplied]

7. A plain reading of the plaint shows that the averments of the plaint reflect that as per the Respondent/Plaintiff, the cause of action to file the suit arose in the year 2017/2018 when the family of the brother of the Respondent/Plaintiff refused to vacate the suit property.

7.1 Article 65 of the Schedule to the Limitation Act provides for the limitation for possession of immovable property on an interest based on the title of property as 12 years when the possession of title becomes adverse to



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the plaintiff in the following manner:

Article	Description of suit	Period of limitation	Time from which period begins to run
65	For possession of immovable property or any interest therein based on title. Explanation....	Twelve years	When the possession of the defendant becomes adverse to the plaintiff

8. From a reading of the plaint it cannot be said that the possession of the Respondent/Plaintiff became adverse more than 12 years prior to the filing of the suit. The plaint sets out a detailed cause of action and sets out that the possession of the Respondent/Plaintiff became adverse after the death of his brother. The contention, since challenged by the Petitioner/Defendant, will require to be examined at a Trial. In any event, it is settled law that the case of the Petitioner/Defendant as set out in his written statement cannot be examined at this stage.

9. The revisionary jurisdiction of this Court under Section 115 of the CPC is limited. The Supreme Court in the case of **Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.**² has held 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. It further clarified that unless the Petitioner is able to show non-exercise of jurisdiction or exercise of

² (2017) 14 SCC 132.



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jurisdiction by the Trial Court is not in accordance with law, no order under Section 115 of the CPC can be passed. The relevant extract in *Ambadas Khanduji* case is set out 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]

10. As discussed above, the examination by this Court does not show absence of jurisdiction in accordance with law or any ground for interference in the Impugned Order.
11. Accordingly, the Petition is dismissed. The pending Application also stands closed.
12. It is clarified that this Court has not expressed any opinion on the merits of the case. All rights and contentions of the parties are left open to be agitated before the appropriate forum.
13. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 25, 2025/r