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

+ **FAO(OS) 118/2025, CM APPL. 64431/2025 (Exemption in filing certified copy of annexures) & CM APPL. 64432/2025 (Exemption)**

ROHIT SAREEN & ORS.Appellants

Through: Ms. Babita Seth, Advocate

versus

SUBHASH CHAND SAREEN & ANR.Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

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14.10.2025

1. The present Appeal, filed by the Appellants who are the **Legal Representatives of Defendant No.1** before the learned Single Judge, assails the correctness of Order dated 11.08.2025 passed by the learned Single Judge in CS(OS) 959/2010, whereby the Application of Defendant No.1 under Order VII Rule 11 of the Civil Procedure Code, 1908 [**"CPC"**] seeking rejection of the plaint at the threshold was dismissed.

2. The Respondent No. 1/Plaintiff filed the suit seeking the following reliefs:

“(a) That the Perpetual Sublease dated 22.04.1978 executed by the Delhi Administration in favour of the defendant No.1 to the extent of 100% may be ordered to be cancelled and it be held that the plaintiff is the sublessor/owner to the extent of 66.6% in the property bearing No. 264, Kalyan Vihar, Delhi-09”.

(b) a declaratory decree may be passed in favour of the plaintiff



and against the defendants thereby declaring that the plaintiff is the owner of 66.6% share in the property bearing No.264 Kalyan Vihar, Behind CC Colony, Delhi on the basis of the amount spent as well as document entered into between the parties i.e. Deed of Agreement dated 14.12.1979 as well as having continuing possession from 1979 as on date on the ground floor of the premises which has been shown 'red' in colour in the plan.

(c) decree for partition be passed in favour of the plaintiff and against the defendant for the property bearing No.264 Kalyan Vihar, Behind C.C. Colony, Delhi- 110009, more shown 'red' in colour and the portion in occupation of the defendant No.1 has been shown 'green' in colour. The portion in occupation of the defendant No.1 has been mentioned 'blue' in colour and 'yellow' in colour is the unauthorized possession of the defendant No.1 on the ground floor and the plaintiff may be ordered to be given two shares in the property i.e. 66.6%;

(d) in case the defendant No.1 fails to partition the property then the Local Commissioner may be appointed to see and ensure whether the property can be partitioned to the extent of plaintiff's share in the property, in question and if the partition is not feasible the property may be ordered to be sold in the open auction and the plaintiff be given his due share in the property, in question (monetary wise);

(e) decree for permanent injunction be passed in favour of the plaintiff and against the defendant No.1 thereby restraining him from interfering in the peaceful possession of the plaintiff on the ground floor and the defendant No.1 be also restrained from dispossessing the plaintiff except by due process of law from the ground floor of the property No.264 Kalyan Vihar, Behind C.C. Colony, Delhi-110009, in question, more shown 'red' in the plan;

(f) the defendant No.1 may be restrained from selling, transferring, alienating or parting with possession of the first floor or the ground floor or whole property in question, 264 Kalyan Vihar, Behind C.C. Colony, Delhi, in favour of anybody, in any manner, till the disposal of the suit or otherwise;

(g) pass such other or further relief which this Hon'ble Court deems fit and proper in the fact and circumstances of the case."

3. In substance, Respondent No. 1 claimed to be the owner of the suit property to the extent of 66.6% and sought partition thereof. Originally, the Perpetual Sub-Lease dated 22.04.1978 was executed by the Delhi Administration in favour of Defendant No.1. However, it is claimed by Respondent No. 1/Plaintiff that by virtue of the Family Settlement dated 14.12.1979, the Appellant was acknowledged as co-



owner and subsequently, by virtue of the Will dated 20.05.1993, executed by his father Mr. Chaman Lal Sarin, he became owner to the extent of a 66.66% share. Respondent No. 1/Plaintiff further submitted that the cause of action to file the suit arose when Mr. Rajinder Sareen [*brother of the Respondents herein*] withdrew the suit on 28.01.2008. Cause of action further arose in November/December, 2009, when the Will executed by his father came into his hands.

4. The rejection of the Plaint was sought on the following two grounds:

- a. That the plaint does not disclose a valid cause of action.
- b. That the suit is barred by limitation.

5. According to the learned Counsel for the Appellants, the cause of action accrued in the year 1978. The learned Counsel for the Appellant contends that the learned Single Judge, erred in rejecting the Application.

6. It is evident from a perusal of para 33 of the plaint that Respondent No. 1 has claimed that the cause of action to file the present suit arose in January 2008 and November/December 2009. Fundamentally, “cause of action” constitutes a bundle of facts pleaded in the plaint and required to be proved.

7. The Respondent No.1/Plaintiff claims to be a co-owner of the suit property and has also relied upon the Family Settlement dated 14.12.1979, which, according to the Plaintiff, has already been acted upon. Hence, *prima facie*, the cause of action for filing the suit would not arise in the year 1978 when the Perpetual Lease Deed was executed.

8. With regard to the second objection *qua* the period of limitation, it would be noticed that such question is a mixed question



of law and facts, and it would not be appropriate to decide the same at this stage. Moreover, there is no limitation period for filing a partition and the same continues till the property remains joint.

9. Consequently, finding no merit, the Appeal is dismissed.

10. Accordingly, the present Appeal, along with pending application(s), if any, shall stand disposed of.

ANIL KSHETARPAL, J

HARISH VAIDYANATHAN SHANKAR, J
OCTOBER 14, 2025/rk/rn/va