2025:DHC:11295-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment reserved on: 04.12.2025***

Judgment pronounced on: 15.12.2025

Judgment uploaded on: 15.12.2025

\+ RFA(OS) 69/2025& CM APPL. 69948/2025, CM APPL. 69949/2025, CM APPL. 69950/2025 and CM APPL. 69951/2025

JAIRAJ DEVELOPERS THROUGH ITS PARTNER MR. ANKUR ARORA .....Appellant

Through: Mr. Sanjiv Sindhwani, Sr. Adv. along with Mr. Sandeep Sharma, Mr. Arun Vohra, Mr. Jatin Julia, Mr. Mrutunjay Mishra, Ms. Kanchan Semwal, Ms. Sonya Gupta, Advs.

versus

MR VARENDHISHAKT PRDHIESUBHAAG ALIAS BABA SAHIB & ORS .....Respondents

Through: Mr. Shashank Rai and Mr. Anshul Rampal, Advs. for Respondent No. 1.
Mr. Akhil Sibal, Sr. Adv. along with Ms. Gurmeet Bindra and Ms. Sarah Haque, Advs. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant assails the correctness of the order dated 07.07.2025 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge [hereinafter

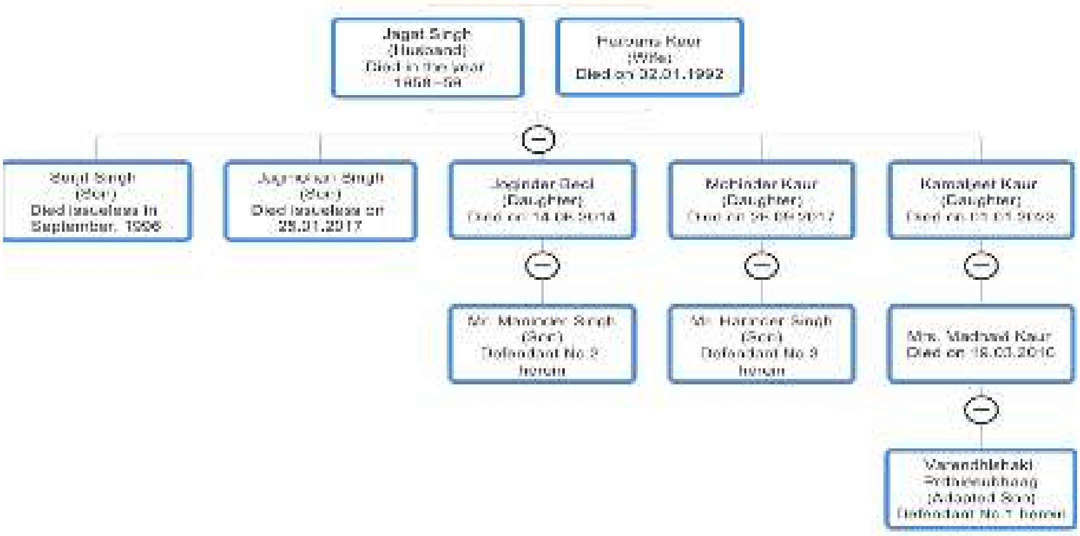
referred to as ‘LSJ’], while allowing the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as ‘CPC’]

2. For sake of convenience, the parties before this Court shall be referred to in accordance with their status before the LSJ.

COMMON FACTUAL MATRIX:

3. For a comprehensive consideration of the issues involved, requiring adjudication, it is apposite to first delineate the family genealogy and the attendant factual matrix, which are set out in the ensuing paragraphs.

4. The genealogy of the family reads as under:



5. While instituting the suit and the interim applications, the Plaintiff, in brief, asserted as under:

5.1 That the present suit has been instituted on 14.09.2023 through its partner Mr. Ankur Arora, who has been duly authorised *vide* Resolution dated 01.09.2023. The suit seeks, *inter alia,* a decree for specific performance qua the ½ share of Defendant No.1 in immovable property bearing no. D-38 Defence Colony, New Delhi 110024, admeasuring 333.33 Sq. Yds [hereinafter referred to as 'Suit Property'].

5.2 The Suit Property was originally the self-acquired property of Smt. Harbans Kaur, through a registered Sale Deed dated 03.11.1962.

5.3 It is stated that Smt. Harbans Kaur executed a Will dated 22.07.1987 bequeathing the Suit Property exclusively in favour of her son, Sh. Jagmohan Singh, to the exclusion of her other legal heirs. Upon her demise on 02.01.1992, Sh. Jagmohan Singh is stated to have become the absolute owner of the Suit Property.

5.4 Sh. Jagmohan Singh died intestate, unmarried and issueless on 25.01.2017, whereupon the Suit Property devolved under the Hindu Succession Act, 1956 [hereinafter referred to as 'HSA'] upon his surviving Class-II legal heirs, namely his two sisters i.e. Smt. Kamal Kumar and Smt. Mohinder Kaur. The Plaintiff asserts that, by operation of law, each of the two surviving sisters inherited an undivided ½ share in the Suit Property.

5.5 Subsequently, Maninder Singh [herein the Defendant No.2], son of pre-deceased sister Smt. Joginder Bedi instituted a partition suit bearing No. CS (OS) No. 281/2017, claiming that the Suit Property formed part of the estate of late Smt. Harbans Kaur, who, according to him, had died intestate. On this basis, he claimed a 1/3rd share therein under Section 15 of the HSA.

5.6 The Court *vide* order dated 05.06.2017, granted an ex-parte ad interim injunction in the said suit, directing the parties to maintain *status quo* with respect to the title and possession of the Suit Property.

5.7 The Defendant No.2 disputed the genuineness of the alleged will dated 22.07.1987, which was referred by Late Smt. Kamal Kumar in her Written Statement. However, she failed to produce the original of the said will before this Court.

5.8 The Plaintiff asserts that during the pendency of the said proceedings, late Smt. Kamal Kumar approached the Plaintiff for sale of the Suit Property and executed an undated Advance-Payment-Receipt, wherein the total sale consideration was agreed at Rs. 24 crores. It is averred that the Plaintiff paid a sum of Rs. 21 lakhs as advance by cheque no. 000067 dated 30.06.2017, which, upon her request, was replaced with a fresh cheque no. 316233 dated 10.07.2017, duly encashed by her.

5.9 The Plaintiff states that it received a notice of Civil Contempt Petition filed in the said suit, stating violation of the Court's *status quo* order dated 05.06.2017.

5.10 After the demise of Smt. Kamal Kumar on 01.01.2023, the Defendant No.1, entered into a Memorandum of Family Settlement [hereinafter referred to as 'MoFS'] dated 10.07.2023 with Defendant Nos. 2 and 3, whereby the Suit Property was divided in 1/3rd share each, amongst themselves. Pursuant thereto, a joint application under

Order XXIII Rule 3 of the CPC was filed, culminating in a final compromise decree dated 11.07.2023 in CS (OS) 281/2017.

5.11 The Plaintiff was completely unaware of the compromise proceedings and first learnt of the same only upon publication of a Public Notice dated 23.08.2023 in the Times of India and The Hindustan Times, inviting offers from third parties for sale of the Suit Property.

5.12 Thus, feeling aggrieved with the aforesaid facts, the Plaintiff filed the present suit seeking the following reliefs:

> *"a. Pass a decree for Specific Performance in favour of the Plaintiff and against the Defendant No.1 implementation of the Advance Payment Receipt dated 30.06.2017 executed by Late Smt Kamal Kumar presently represented by her legal heir Defendant No.1- Mr. Varendhishakt Prdhiesubhaag @Baba Sahib, in respect of the ½ share in the Property No. D-38 Defence Colony, New Delhi-110024, admeasuring 333.33 Sq. Yds. Together with cost of the suit against the payment of the balance agreed consideration amount within such time as may be fixed, allowed and granted by this Hon'ble Court;*
>
> *b. Pass a decree for Declaration declaring the Memorandum of Family Settlement dated 10.07.2023 as illegal, unlawful and null and void ab initio;*
>
> *c. Pass a decree for Permanent Injunction in favour of the Plaintiff and against the Defendants and by the said decree, the Suit Porperty being ½ share of the Property No. D-38 Defence Colony, New Delhi-110024, admeasuring 333.33 sq. Yds, be kindly preserved in its present position and condition and the Defendants, their servants, agents, employees and representatives etc. be kindly restrained from selling, alienating, encumbering, transferring or disturbing the status of possession in respect of the suit property and status quo regarding the ownership, possession, title of the Suit Property, during the pendency of the suit be maintained;*
>
> *d. Cost of the suit may also be awarded in favour of the Plaintiff and against the Defendants;"*

6. The Defendants *vide* I.A. No. 6311 of 2024, filed an application under Order VII Rule 11 of the CPC, seeking rejection of the Plaint briefly on the following grounds:

6.1 That the Advance-Payment-Receipt dated 30.06.2017, the specific performance of which is sought by the Plaintiff, was executed in violation of *status-quo* order passed by the court in CS (OS) 281/2017 dated 05.06.2017 and is therefore, illegal, invalid, *void ab initio* and unenforceable being barred by law.

6.2 The present suit is expressly barred under Order XXIII Rule 3A of the CPC, which prohibits the institution of a separate suit to set aside or otherwise challenge a compromise decree. Without taking recourse to appropriate proceedings for setting aside the compromise decree dated 11.07.2023, the instant suit does not disclose a cause of action and is barred by law. The defendants submit that the Plaintiff is, in effect, seeking to nullify a valid decree dated 11.07.2023 passed on the basis of a MoFS dated 10.07.2023, which is impermissible.

6.3. The suit is *ex facie* barred by the limitation. The limitation for filing a suit for specific performance, as per Article 54 of the schedule to the Limitation Act, 1963 is three years from the date fixed for performance or if no such date is fixed, when the Plaintiff has notice that the performance is refused. A perusal of the Payment Receipt shows that no time or date for performance was stipulated. In the absence of time fixed, the limitation to institute the present suit would be three years since the Plaintiff has notice of the Defendant No.1's refusal to perform, and the present suit is filed in 2023, is hopelessly barred.

6.4 That the Plaintiff has failed to demonstrate continuous readiness and willingness to perform its obligations at any time between 2017 and the institution of the present suit. In fact, the Advance-Payment-Receipt is inherently flawed and unenforceable in law, having been executed in flagrant breach of the status quo order passed by the Court on 05.06.2017. An agreement executed in contempt of court orders cannot form the foundation of any relief, including specific performance. The suit is therefore an abuse of the process of law.

6.5 Defendants further state that late Smt. Kamal Kumar never encashed cheque no. 316233. The Defendants state that the sum of Rs. 21 lakhs was credited into her bank by the Plaintiff through a separate cheque, without her consent, and she became aware of the deposit only upon intimation by the bank on 16.08.2017. This fact is duly reflected in the reply dated 23.07.2019.

6.6 It is asserted that the plaint fails to disclose any legally sustainable cause of action and is a malafide attempt to re-open closed issues, cloud title, and obstruct their enjoyment of lawful rights pursuant to the decree dated 11.07.2023. Thus, it was urged that the plaint be rejected in its entirety as barred by law, devoid of merit, and constituting an abuse of the process of court.

7. Therefore, in view of the aforesaid circumstances, the LSJ allowed the application under Order VII Rule 11 of the CPC, holding that the Plaint does not disclose a cause of action and is *ex facie* barred by law. Further, the court observed that no concluded or binding agreement existed between the partiesand consequently, the Plaintiff

has no locus to challenge the MoFS, the decree dated 11.07.2023 or the Will dated 22.07.1987.

CONTENTION OF THE PARTIES

8. Learned senior counsel for the Appellant/Plaintiff, while controverting the findings of the LSJ, has advanced the following submissions:

8.1 The Plaintiff contended that the issue pertaining to limitation constitutes a mixed question of law and fact, which cannot be adjudicated at the threshold without trial. The plaint clearly discloses that payments were made and demands were raised within the period of limitation.

8.2 It was urged that the LSJ has erred in construing that the suit lacks cause of action on the premise that the Plaintiff was neither ready nor willing and that no concluded contract existed between the parties. The issue of readiness and willingness is a triable issue that required leading of evidence and cannot be determined summarily. It was further contended that one contracting party cannot insist on performance by the other while itself failing to fulfil its reciprocal obligations.

8.3 The LSJ failed to appreciate that Defendant No.2 claiming to be the son and sole legal heir of Late Smt Joginder Bedi, claiming 1/3rd share, filed a suit for partition of the Suit Property being CS (OS) NO. 281/2017, which *per se* is barred under the HSA, as he did not qualify as Class-II legal heir of Sh. Jagmohan Singh.

8.4 It was further submitted that late Smt. Kamal Kumar, wife of Sh. Suresh Kumar, offered and agreed to sell her property, being unaware of the *ex-parte* status quo order dated 05.06.2017. She represented herself as the sole and absolute owner of the Suit Property on the basis of the Will dated 22.07.1987 executed by her mother, late Smt. Harbans Kaur, in favour of Sh. Jagmohan Singh and categorically affirmed that there existed no prior litigation/agreement *qua* the said property.

8.5 The LSJ failed to appreciate that the Plaintiff paid a sum of Rs.21,00,000/- towards the total sale consideration of Rs.24,00,00,000/- against Advance-Payment-Receipt, which was duly signed, acknowledged and confirmed the same by Late Smt. Kamal Kumar by her signatures on the said Receipt.

8.6 The Plaintiff contended that late Smt. Kamal Kumar consistently assured the Plaintiff that she would conclude the sale transaction as soon as the litigation of CS (OS) 281/2017 was decided in her favour, reiterating that she alone was the owner of the Suit Property and the other parties claiming partition had no lawful share in the said property. However, as per succession law governing the legal rights devolving upon the surviving legal heirs, Late Smt Kamal Kumar was the owner to the extent of ½ share in the property.

8.7 It was further submitted that the LSJ failed to appreciate that the Plaintiff was always ready and willing to perform its part of the contract, but was prevented from completing the sale transaction owing to the intra-family litigation in CS (OS) 281/2017, which was clandestinely compromised by and between the Defendants by entering into a void Memorandum of Family Settlement dated 10.07.2023, immediately after the demise of Smt. Kamal Kaur on 01.01.2023 which resulted in a consent decree. It was alleged that the circumstances surrounding her death were suspicious.

8.8 LSJ failed to appreciate that the readiness and willingness, as also the financial capacity and capability are the issue of trial which cannot be summarily decided without leading of cogent evidence.

8.9 It was contended that the Impugned Order dated 07.07.2025 is bad in law as the same lacks application of mind and has been passed without appreciating the material facts, averments and documents on record. Therefore, the same deserves to be set aside.

9. *Per contra*, the learned counsel for the Defendants has raised the following contentions:

9.1 The Defendants contended that the instant suit instituted by the Plaintiff is not maintainable and deserves to be rejected at the threshold under Order VII Rule 11 of the CPC, on multiple independent grounds including bar under law, estoppel, and absence of a valid cause of action.

9.2 It was submitted that the very foundation of the present suit, namely the undated Advance-Payment-Receipt is inherently flawed and unenforceable in law, having been executed in blatant violation of the *status quo* order passed by the Court on 05.06.2017. Not only this, the document does not constitute a valid agreement to sell in the eyes of law, because it lacks essential ingredients such as time for performance, obligation of parties, or manner of payment and registration. The Plaintiff thus seeks specific performance of an agreement that is *void-ab-initio* as it contravenes a subsisting court injunction, thereby constituting an abuse of process.

9.3 The Defendants further contended that the credit of Rs. 21 Lakhs in the account of Late Smt. Kamal Kumar was unauthorised and without her consent, as she never encashed the said cheque no. 316233. Instead, the Plaintiff deposited a separate cheque into her account without her authorisation, which she was made aware of by the bank on 16.08.2017. Thus, it clearly indicates that the Defendants were not a party to the said agreement for sale and the Advance-Payment-Receipt cannot substitute for execution of a (formal) agreement to sell.

9.4 It was further stated that the suit is barred under the mandate of Order XXIII Rule 3-A of the CPC, which expressly prohibits a separate suit to challenge a compromise decree. The Plaintiff is indirectly attempting to nullify the decree dated 11.07.2023 based on the MoFS dated 10.07.2023.In addition to this, it was pointed out that a preliminary decree dated 23.01.2020 had already declared the shares of the Defendants as $1/3^{rd}$ each, in the presence of the Plaintiff, which has never been challenged by the Plaintiff. The Plaintiff had also filed an interim application seeking impleadment in CS (OS) 281/2017, which was disposed of vide order dated 11.07.2023 and the said dismissal was not challenged by the Plaintiff.

9.5 Additionally, the Defendants also submitted that the present suit is also ex facie barred by limitation under Article 54 of the Limitation Act, 1963, which prescribes a period of three years for filing a suit for specific performance, commencing from the date fixed for performance, or if no such date is fixed, from the date when the Plaintiff has noticed that performance is refused, as also the Plaintiff's own averments made in interim application filed under Order I Rule 10 of the CPC, wherein the Plaintiff unequivocally stated that the execution and registration of the sale deed was to take place on or before 30.09.2017. It was further pointed out that the Plaintiff had acknowledged receipt of notice of contempt petition in the year 2018, and that Smt. Kamal Kumar replied to the said contempt petition dated 23.07.2019, wherein she expressly refused to abide by the transaction and stated she had no intent to sell her share. Despite such unequivocal repudiation by Late Smt. Kamal Kumar, the Plaintiff chose not to act for over four years.

9.6 The Defendant further argued that the Plaintiff is estopped from taking a contrary stand in the suit after having admitted in the previous suit that all the Defendants had agreed to sell the Suit Property. In contrast, the Plaintiff now falsely asserts that only Late Smt. Kamal Kumar had represented herself as the exclusive owner. Such contradictory pleadings attract the doctrine of approbation and reprobate.

9.7 The Defendants pointed out that as recorded in MoFS dated 10.07.2023 and decree dated 11.07.2023, the current market price of the Suit Property can fetch up to Rs. 36 crores and the Defendants have already entered into an agreement with a third party on 19.08.2023 for a sum of Rs. 33 crores.

9.8 Lastly, it was submitted that the plaint fails to disclose any legally sustainable cause of action and is merely an attempt to re-open closed issues, cloud the title, and delay the enjoyment of lawful rights by the Defendants under the decree dated 11.07.2023. It was therefore prayed that the plaint be rejected in its entirety as being barred by law, devoid of merit, and constituting an abuse of process of Court.

ANALYSIS AND FINDINGS

10. This Court has heard learned senior counsel for the parties at length, and with their able assistance, perused the paper book.

11. The enabling powers of the Court to reject the plaint at the threshold is circumscribed and regulated under Order VII Rule 11 of the CPC, which reads 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 9:]*
>
> *[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"*

12. It is noticed that the Plaintiff has specifically pleaded that payments were made, demands were raised, and assurances were repeatedly extended by Late Smt. Kamal Kumar within the period of limitation. The Plaintiff further averred that the sale transaction was deferred only on account of the pendency of CS (OS) 281/2017 and that the Plaintiff was always ready and willing to perform their part pending resolution of that litigation. The Defendants, on the other hand, relied on the Plaintiff's statements in impleadment application, and on the alleged repudiation in 2019, to contend that limitation commenced on 30.09.2017 or at least by 2019. The court is of the view that these matters require examination of evidence, including whether the parties had mutually extended time or whether the cause of action was kept alive by subsequent conduct of the parties.

13. It is well-settled that limitation may be decided under Order VII Rule 11 of the CPC, only where the bar is apparent on the face of the Plaint. In the present case, the Plaint sets out multiple facts, that if proved, may bring the suit within limitation. Thus, at this stage, the LSJ committed a jurisdictional error in rejecting the plaint on limitation without framing issues or permitting the parties to lead evidence.

14. As regards the contention that whether a concluded contract existed and whether the Plaintiff was ready and willing to perform their obligations, all these issues are triable issues. The finding of the LSJ that the Plaint does not disclose a cause of action for want of a concluded contract, at this stage, is untenable.The Plaintiff has

pleaded that there is an execution of Advance-Payment-Receipt signed and acknowledged by Late Smt. Kamal Kumar, and the payment of Rs.21,00,000/- was also acknowledged by her. Moreover, Late Smt. Kamal Kumar also made a representation before the Plaintiff that she was the sole owner of the Suit Property, giving assurances that upon conclusion of the pending lis, she will execute the said agreement in favour of the Plaintiff.

15. The Defendants dispute the authenticity of the transaction, challenging the legality of the payment, and allege violation of status-quo order. These issues constitute matters of defence, which cannot furnish a basis for rejection of the plaint under Order VII Rule 11 of the CPC. Moreover, the readiness and willingness under Specific Relief Act is predominantly an evidentiary matter. The Plaintiff has asserted continuous readiness and willingness and has pleaded detailed facts regarding their financial capability and bona fides, therefore, at this stage such averments must be taken at face value. The LSJ, instead of adhering to the settled jurisprudence governing Order VII Rule 11 of the CPC, embarked upon an impermissible mini trial by evaluating the Defendant's rebuttal, which is impermissible in law.

16. With respect to the contention regarding the bar under Order XXIII Rule 3A being attracted in the present case, this court observes that the suit filed by the Plaintiff does not seek to set aside the consent decree dated 11.07.2023 *per se*, rather, the Plaintiff challenges the legality and validity of the MoFS dated 10.07.2023, which the Plaintiff alleges was entered into

fraudulently and collusively in order to defeat their pre-existing contractual rights. Moreover, the Plaintiff claims that such compromise decree passed by the Court is not binding upon him as he was not party to the same. It is well-settled that where a third party seeks to enforce rights independent of and prior to the compromise decree and not to annul the decree itself, the bar under Order XXIII Rule 3A, is not attracted. Since, the Plaintiff's cause of action arises from an alleged agreement with Late Smt. Kamal Kumar, predating the compromise, and the Plaintiff does not ask the Court to set aside the compromise decree but to enforce their own contractual rights, therefore, the bar under Order XXIII Rule 3A does not arise for consideration at this preliminary stage, and the plaint could not have been rejected on that ground.

17. It was further contended that Late Smt. Kamal Kumar represented herself as the sole owner based on a Will and that Defendant No.2's claim to 1/3rd share was invalid. The Defendants dispute this position and rely on the preliminary decree dated 23.01.2020 and subsequent MoFS, which involve the validity of Defendant No.2's claim, the right devolving upon the heirs and whether misrepresentation was made to the Plaintiff. These are not issues that can be summarily adjudicated. They strike at the root of the contractual narrative and must be determined after evidence, not at the preliminary stage.

18. Likewise, allegations of fraud, collusion, and suppression cannot be brushed aside without trial. Courts have consistently

held that where allegations of fraud form the substratum of the Plaint, summary rejection of Plaint is impermissible.

19. Lastly, with regard to the contention that there was no concluded contract between the parties, it is pertinent to note that such an issue can be examined only during the course of trial and not at the stage of Order VII Rule 11 of the CPC. The Plaintiff has specifically averred the existence of an oral agreement, which was followed by an Advance-Payment-receipt, pursuant to which a sum of Rs.21 Lakhs was paid through cheque. The said cheque was subsequently replaced and duly encashed by Late Smt. Kamal Kumar. Order VII Rule 11 of the CPC does not envisage a mini-trial at the preliminary stage. Rejection of Plaint is permissible only if it squarely falls within the limited grounds enumerated under Order VII Rule 11 of the CPC, which are required to be construed strictly so as to avoid any unwarranted expansion beyond the legislative intent underlying the CPC.

20. Taken as a whole, the averments including representation made by Late Smt. Kamal Kumar; entering into an agreement to sell; payment of advance consideration; assurances regarding completion of sale after disposal of the partition suit, and wrongful frustration of the contract due to collusive acts of the Defendants, these averments satisfy the requirement of disclosure of cause of action, and the plaint cannot be characterised as vexatious, illusory or an abuse of process at this stage.

21. For the reasons discussed above, this Court finds that the LSJ erred in rejecting the plaint under Order VII Rule 11 of the

CPC. The issues raised by the Plaintiff involve complex and disputed questions of fact and law, including those pertaining to limitation, validity of contract, title, succession, fraud and readiness and willingness, none of which can be determined without permitting the parties to lead evidence.

CONCLUSION

22. In light of the above findings, it is concluded that LSJ has erred in passing the Impugned Order. Keeping in view the aforesaid circumstances, this Court is inclined to allow the present Appeal.

23. Hence, the present Appeal is hereby allowed and the suit is restored to its original number. The parties, through their counsel, are directed to appear before LSJ (Roster Bench) on 22.12.2025.

24. It is clarified that this judgment shall not be construed as final decision on the merits of the case.

25. The present Appeal, along with all the pending applications, stands disposed of.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.

DECEMBER 15, 2025
s.godara/ra