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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 208/2025, CM APPL. 78106/2025, CM APPL. 78108/2025
SH. RAJ PAL SINGH & ANR.Appellants

Through: Ms. Jaya Goyal with Ms. Manpreet
Kaur, Mr. Sarthak, Advocates.

versus

SH. RANJEET SINGH AND ORSRespondents

Through: Mr. Ankit Jain, Sr. Advocate with Mr.
Mohit Gupta, Ms. Seemab Ali
Fatima, Mr. Parth Gautam,
Advocates.
Mr. Sanjay Vashishtha, Standing
Counsel for MCD.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
10.12.2025

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CM APPL. 78107/2025

Exemption granted, subject to just exceptions.

The application stands disposed-of.

RSA 208/2025

By way of the present regular second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellants impugn judgment and decree dated 15.10.2025 passed by the learned District Judge-04, Shahdara District, Karkardooma Courts, Delhi in appeal bearing RCA No. DJ 16/2020, whereby the learned first appellate court has dismissed the appeal filed by the appellants, challenging judgment dated 11.04.2019 passed by the learned



Additional Senior Civil Judge, Shahdara District, Karkardooma Court, Delhi in suit bearing Case No.254/2017 ('second suit').

2. The genesis of the present regular second appeal is order dated 26.08.2016 passed by the learned trial court in suit bearing No. 188/2007 ('first suit') on an application under Order VII Rule 11 CPC, in which case the learned trial court was pleased to reject the plaint with the following relevant observations:

"4. However, the said ground is incorrect, as in the application u/o VI R 17 Code of Civil Procedure, 1908, the plaintiffs claimed to be the sons of Mahinder and Hemraj, great grandson of late Sh. Nathu. In the application, plaintiffs claimed that the property belonged to three brothers namely Jhumman, Nathu and Lala. The application u/o VI R 17 Code of Civil Procedure, 1908 was dismissed by the Ld. Predecessor of this court vide order mentioned and reproduced above and the said order has attained finality. As such as on date, as per plaint, the plaintiffs are claiming share in the property in which their great grandfather Sh. Nathu had no interest as per plaint itself. It is found that their submission in para 2 of the plaint that they and the defendants originated from the common ancestor i.e. late Sh. Jhumman Singh and Sh. Sunehari was incorrect and false and entire claim of the plaintiffs was based on the ground that they are agnates of the two owners of the property i.e. Jhumman and Lala.

"5. Now that it has been admitted, rather, asserted by the plaintiffs themselves that they are not the agnates of Jhumman and Lala and they are great grandsons of Nathu, who as per para no. 1 of the plaint had no share in the property, hence the claim of the plaintiffs is baseless, Plaintiffs tried to correct the same by moving application u/o VI R 17 Code of Civil Procedure, 1908 but the same was dismissed by reasoned order.

"6. Accordingly as on date, as per plaint, Late Nathu had no right in the property in question and plaintiffs being agnates of Nathu, also do not have any right in the property because as per plaint the property in question belonged to Jhumman and Lala i.e. predecessor in interest of defendants.



“7. Therefore, the suit is not maintainable being without any cause of action, rather, the entire case was based on a wrong premise that the plaintiffs were agnates of Jhumman & Lala, though they were agnates of Nathu, who never had any interest in the property.

“8. This issue is accordingly decided in favour of defendants and against the plaintiffs.

“9. The suit stands dismissed.”

(emphasis supplied)

3. The aforesaid order dated 26.08.2016 passed in suit bearing No. 188/2007 was taken-up in a (different) appeal, which appeal was subsequently disposed-of as withdrawn *vide* order dated 06.12.2016, with the learned first appellate court recording as follows:

“Ld. Counsel for appellant submits that he has instructions to withdraw the appeal and he may be, granted liberty to avail the legal remedy of filing the fresh suit.

“Statement of the Id. Counsel for appellant is recorded to this effect. In view of the facts and submissions, this appeal is dismissed as withdrawn. The appellant/plaintiff is at liberty to avail the legal remedy in accordance with the provisions of the law. The respondents are also at liberty to take the defence in any of the proceedings filed by the appellant/plaintiff in accordance with the provisions of the law.”

(emphasis supplied)

4. Based on the liberty granted by the learned first appellate court in the earlier appeal as referred to above, the appellants filed the second suit *i.e.*, suit bearing Case No.254/2017, which plaint also came to be rejected by the learned trial court *vide* order dated 11.04.2019 under Order VII Rule 11 CPC with the following conclusions:

“8. In this case, the plaintiff has not filed any document on record which shows as to what was the technical defect on the basis of which the appeal was withdrawn. The perusal of plaint and the order/judgment dated 26.08.2016 passed by the court of Sh. SPS



Laler, the then L.d. SCJ shows that the averments are identical. Hence, the judgment dated 26.08.2016 as mentioned above had attained finality.

“9. In this case, the plaintiff has alleged that they are the legal heirs of Sh. Nathu Lal and they are therefore entitled to their share in the suit property. Perusal of judgment and decree dated 26.08.2016 shows that previous suit was between the same parties with regard to same facts and it was categorically held that, "Late Sh. Nathu Lal had no right in the property in question and plaintiffs being legal heirs of Nathu Lal also do not have any right in the property. As per plaint, the property in question belong to Sh. Jhumman and Lala i.e. predecessor interests of defendants."

“10. Section 11 of CPC bars the court from trying any suit or issue which was directly and substantially in issue between the same parties or between parties under whom they claim, which has already been decided by a court competent to try such subsequent suit. It is reproduced below :-...”

** * * * **

“13. Thirdly, the plaintiffs have filed the suit for injunction against defendants by claiming that defendants are the co-sharer of the suit property alongwith plaintiffs. Even if we examine the maintainability of the suit leaving aside aforementioned aspect, it has to be noted that in Krishan Singh Vs. Sucha Singh, 2008 (2) Civil Court Cases 755 (P & H), it has been held that, "Where the suit simpliciter for injunction was filed against the alleged co-sharer, who was in exclusive possession, the court in that case observed that the plaintiff could assert his right by filing a suit for partition, and a suit for permanent injunction is not maintainable." Further in Bachan Singh Vs. Swaran Singh, (2000) 126 PLR 416, the Hon'ble Punjab & Haryana High Court held that, "A co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession."

“Hence, the present suit which is a simpliciter suit for injunction without seeking partition is not maintainable on this ground as well.



“14. Thus, in view of the aforementioned discussion, the plaint is rejected under Order 7 Rule 11 of CPC. File be consigned to record room after due compliance.”

(emphasis supplied)

5. The appeal filed by the appellants against order dated 11.04.2019 has also been dismissed by the learned first appellate court, against which the appellants have preferred the present second appeal. While dismissing the appeal the learned first appellate court has set-out the run of events in the *first suit* and in the *second suit*; and has then proceeded to conclude as follows:

“26. The plaintiffs have pleaded the same facts in the plaint of CS No.254/2017 which were earlier pleaded by them in the application under Order VI Rule 17 CPC in CS No.188/2007. Admittedly, the said application was dismissed vide order dated 25.08.2010 and the same has already attained the finality because plaintiffs have not assailed the said order before the Appellate Court.

“27. The earlier suit bearing CS No.188/2007 was rejected on the ground of maintainability being without any cause of action. It was held by the Ld. Trial Court in CS No.188/2007 that the entire case of plaintiffs was based on a wrong premise that the plaintiffs were agnates of Sh. Jhuman and Sh. Lala, though they were agnates of Sh. Nathu, who never had any interest in the suit property.

“28. It is settled law that an action prohibited by law should not be achieved through roundabout or circuitous means i.e. what cannot be done directly cannot be done indirectly. The Trial Court has already disallowed plaintiffs to plead a different/new case in CS No.188/2007 vide order dated 25.08.2010, therefore, plaintiffs cannot be allowed to plead a new case in CS No.254/2017 particularly, when the earlier suit of plaintiffs i.e. CS No.188/2007 has already been dismissed on the basis of admissions of plaintiffs. The plaintiffs are now estopped from averring contrary to the averments pleaded earlier in CS No.188/2007.”

* * * * *

“33. Considering the facts and circumstances of the case, material came on record and above observations, this Court is of the considered view that there is no perversity in the judgment/order



dated 11.04.2019 passed by the Id. Trial Court in CS No.254/2017 and therefore, the same does not require any interference.”

(emphasis supplied)

6. In this backdrop, the appellants have now sought to raise the following proposed questions of law, which are set-out in para 4 of the memo of appeal:

“(i) Whether the averment made in the second suit bearing CS No. 254 of 2017, titled as Raj Pal Singh & Anr. Vs. Ranjeet Singh & Ors. are barred by law of limitation and were not part of pleadings of the earlier suit.

“(ii) Whether the finding given in the order dated 26.08.2016 passed in CS No. 188 of 2007 will operate as res-judicata in the suit No. 254 of 2017, which was filed after the liberty granted by the Ld. Appellate Court vide order dated 06.12.2016 in the appeal bearing RCA No. 85 of 2016 which was filed challenging the order dated 26.08.2016.

“(iii) Whether the second suit bearing No. 254 of 2017 cannot be dismissed on the ground of res-judicata.

“(iv) Whether the issue of the res-judicata can be decided in the application filed under Order VII Rule 11 CPC.”

7. In the opinion of this court, though framed as separate questions of law, the essence and substance of all the proposed questions of law is one and the same. The proposition sought to be raised by the appellants is whether the basis of dismissal of the first suit, between the same parties and on substantially the same cause of action, will operate as *res-judicata* for the second suit under section 11 CPC; and whether a plaint can be rejected under Order VII Rule 11(d) CPC as being barred by the law (or legal principle) of *res-judicata*.
8. This court is of the view that the above proposition does not raise any substantial question of law that would require consideration, since it is



long settled that section 11 CPC bars a subsequent suit between the same parties, on substantially the same cause of action; and therefore, the principle of *res-judicata* as enshrined in section 11 CPC is indeed a ground to reject a plaint at the threshold under Order VII Rule 11(d) of the CPC.

9. When faced with this settled legal position however, Ms. Jaya Goyal, learned counsel appearing on behalf of the appellants submits, that by way of yet another suit bearing CS No.2581/2016 the appellants have sought partition of what they claim to be joint property, which suit has also been dismissed on the ground of *res-judicata*; and an appeal bearing RFA No.672/2002 challenging that decision is pending adjudication in this court. Ms. Goyal submits, that the observations in suit bearing Case No.254/2017, and in the first appeal from which the present regular second appeal arises, would likely prejudice the proceedings pending in RFA No.672/2022.
10. In the opinion of this court, this apprehension on the part of the appellants does not raise any question of law that deserves to be considered in the present proceedings; and the consequences and effect of the observations made by the learned trial courts and the first appellate courts in the above-referred matters, would have to be faced by the appellants in RFA No.672/2022.
11. As a sequitur to the above, this court is unable to discern any question of law, muchless any substantial question of law, which arises in the present second appeal.



12. The second appeal is accordingly dismissed, at the stage of issuance of notice itself.
13. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 10, 2025
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