



2025:DHC:11618-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18.12.2025

+ RFA(OS) 8/2025 and CM APPL. 6785/2025

ASHISH KUMAR

.....Appellant

Through: Mr. Sujeet Kumar Mishra, Mr.
Harsh Kumar Pandey, Advs.

versus

SMT KAMINI KUMAR & ORS.

.....Respondents

Through: Ms. Manpreet Kaur, Adv. for
R-1.

Mr. Ashim Vachher, Sr. Adv.
with Ms. Saiba Meher Rajpal,
Adv. for R-2.

Mr Pankaj Balwan, Mr Utkarsh,
Advs. for R-3 to 5.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

J U D G M E N T (O R A L)

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant assails the correctness of the order dated 21.10.2024 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge, whereby the Plaint filed by the Appellant [Plaintiff before the learned Single Judge] was rejected on the first date of hearing under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'].

2. For the sake of convenience, the parties before this Court shall

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be referred to in accordance with their status before the learned Single Judge.

3. From a perusal of the Impugned Order, it emerges that the learned Single Judge rejected the plaint primarily on the following grounds:

- i. that the Plaint was not maintainable in view of Section 34 of the Specific Relief Act, 1963 [hereinafter referred to as 'SRA'];
- ii. that there existed a demarcating dividing line with respect to the roof/terrace rights over the second floor of the property bearing No. 35, Anand Lok, New Delhi [hereinafter referred to as 'suit property'] between the Plaintiff and Defendant No.1; and
- iii. that the Plaintiff had no cause of action since the Defendant No.1 allegedly admitted that the Plaintiff had a 50% share with respect to the roof/terrace rights over the second floor.

4. The Plaintiff filed the Plaint against the following Defendants:

- i. Defendant No.1 – Smt. Kamini Kumar;
- ii. Defendant No.2 – Capt. Avinash Chander Malhotra;
- iii. Defendant No.3 – M/s Bracknell Investments Pvt. Ltd.;
- iv. Defendant No.4 – Mr. Sanjeev Mittal; and
- v. Defendant No.5 – Smt. Indira Menon.



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5. The Defendant Nos.1 and 2 entered appearance before the learned Single Judge on the first date of hearing. However, the Defendant Nos.3 to 5 were not issued Notice. In the Plaint, the Plaintiff sought the following reliefs:

“i. Grant a decree of declaration in favour of the Plaintiff declaring that the Plaintiff has absolute right title and interest having perfected the title in the suit property being undivided 50% portion of Roof /Terrace (unconstructed Third Floor) over the Second Floor admeasuring about 3641 Sq.ft in the property bearing No. 35, Anand Lok, New Delhi-110049. (more specifically detailed in the Schedule A annexed to the plaint);

ii. Grant decree of perpetual injunction in favour of the Plaintiff and against the Defendants permanently restraining the Defendants, their agents, servants, relatives etc. interfering with the peaceful possession, occupation, enjoyment, use of the suit property by the Plaintiff;

iii. For granting relief of mandatory injunction against the Defendants restrain Defendants from interfering with the title and possession of the Plaintiff by creating any third party interest in the suit property and illegally dispossessing the Plaintiff from the suit property;

iv. Costs of the instant suit; and”

6. This Court has heard learned counsel representing the parties at length and with their able assistance, perused the record.

7. Learned counsel representing the Respondent No.1 contended that the suit property stood divided between the parties by virtue of a Deed of Partition dated 10.03.1997 and, therefore, no dispute survived.

8. Learned senior counsel representing the Respondent No.2/ Defendant No.2 submitted that the Respondent No.2 has purchased the front portion of the terrace from late Sh. Arun Kumar, who is the husband of Respondent No.1/ Defendant No.1.



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9. The power of the Court to reject a plaint at the threshold is traceable exclusively to Order VII Rule 11 CPC and is confined to the grounds enumerated therein. While exercising jurisdiction under the said provision, the Court is required to confine itself strictly to the averments contained in the plaint and the documents relied upon by the Plaintiff, without embarking upon an examination of the defence or disputed questions of fact. Order VII Rule 11 of the CPC 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.]”

10. In the present case, the Plaintiff, in paragraph 16 of the Plaint, has pleaded the cause of action in the following terms:

“16. That the cause of action for the institution arose on diverse dates when the Defendant No.1 has instituted the suit against the plaintiff and the Defendant no. 2 i.e. on 29.08.2023 and also on 25.08.2024 when the defendant No.1 and defendant No.2 have tried to negotiate

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for sale of the 50% of the suit property and further when recently the defendant has tried to dispose the Plaintiff of which the plaintiff had no knowledge. The cause of action has thereafter been continuing one has also arisen on subsequent dates when the Defendants have tried to dispose the Plaintiff on the suit property i.e. on 28.08.2024 and as such the said cause of action is still subsisting and continues in favour of the Plaintiff and against the Defendant.”

11. From a plain reading of the aforesaid averments, it cannot be said that the Plaint does not disclose a cause of action. The learned Single Judge has not held that the Plaint lacks disclosure of a cause of action; rather, the conclusion drawn is that the Plaintiff has “no cause of action”. There is a material distinction between non-disclosure of a cause of action and an assessment of the sufficiency or tenability of the cause of action, the latter being impermissible at the stage of Order VII Rule 11 CPC. This assumes greater significance in the present case, as Defendant Nos.3 to 5 were not even issued notice and there was no occasion for any admission on their behalf, who also purchased certain portion of the property.

12. The rejection of the plaint on the basis of the proviso to Section 34 of the SRA is also unsustainable. The proviso contemplates dismissal of a suit where a plaintiff, being able to seek further relief than a mere declaration, omits to do so. In the present case, the Plaintiff has sought not only a decree of declaration but has also prayed for consequential reliefs of perpetual and mandatory injunction. Therefore, the bar contained in the proviso to Section 34 of the SRA was not attracted, and in any event, could not have been made a ground for rejection of the plaint at the threshold.

13. The learned Single Judge has further proceeded on the premise



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that there exists a demarcating dividing line on the roof/terrace of the second floor between the parties. The Plaintiff, however, specifically disputes the existence and effect of any such demarcation and asserts that the roof/terrace rights were never partitioned. Although a Deed of Partition dated 10.03.1997 is stated to have been executed between the parties with respect to certain portions of the property, it is not evident therefrom, at least at this stage, as to whether and to what extent the roof/terrace rights over the second floor were the subject matter of such partition. The scope, effect and applicability of the said deed to the roof/terrace rights are clearly disputed questions of fact which could not have been adjudicated at the stage of Order VII Rule 11 of the CPC.

14. Similarly, the applicability of Section 44 of the Transfer of Property Act, 1882, and the legal effect of the alleged transfers in favour of Defendant No.2 or other Defendants, raise mixed questions of law and fact. Such issues necessarily require evidence and cannot be conclusively determined while exercising jurisdiction under Order VII Rule 11 of the CPC.

15. From the foregoing discussion, it is apparent that the learned Single Judge, while rejecting the plaint, entered into a merits-based adjudication by relying upon disputed facts and defence submissions, which was beyond the permissible scope of consideration under Order VII Rule 11 CPC.

16. Accordingly, the present Appeal is allowed. The Impugned Order dated 21.10.2024 is set aside and the Plaint is restored to its



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original number.

17. The parties, along with their respective counsel, are directed to appear before the learned Single Judge (Roster Bench) on 12.01.2026.

18. It is clarified that all rights and contentions of the parties are left open to be urged before the learned Single Judge, who shall consider the same in accordance with law, uninfluenced by any observations made herein.

19. The present Appeal, along with the pending application, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 18, 2025

jai/pal