



2025:DHC:10634-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.11.2025

+ RFA(OS) 41/2016

RAM KISHOR

.....Appellant

Through: Mr. V.P. Rana, Adv.

versus

KANWAL SINGH & ORS

.....Respondents

Through: Mr. Ujjwal Goel & Mr. Yog
Raj Sharma, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

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JUDGEMENT (ORAL)

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Appellant, assailing the correctness of the order dated 15.03.2016, passed by the learned Single Judge in CS (OS) 2839/2012 titled as “*Ram Kishore vs. Kanwal Singh & Ors.*”

2. By way of the impugned Order, while exercising the powers vested under Order VII Rule 11 of the Civil Procedure Code, 1908 [“CPC”], the learned Single Judge has proceeded to reject the plaint on the following two grounds:

a. The subsequent suit is barred by the principle of *res*

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judicata, and

b. The suit property is not Abadi land.

3. For the sake of convenience and clarity, the parties herein shall be referred to in the same rank as they are arrayed in the Suit before the learned Single Judge.

4. Plaintiff [Appellant herein] filed a suit for partition, rendition of accounts and decree for permanent injunction.

5. The Plaintiff claims that late Sh. Mam Raj was the permanent resident of village Alipur, Delhi, and he was the owner in possession of the three subject properties situated within Abadi and old Lal Dora within Khasra No. 894 and new Khasra No. 115, village Alipur, Delhi.

6. Plaintiff claimed that, being one of the heirs of late Sh. Mam Raj, he is entitled to partition.

7. There was a previous suit filed by the Plaintiff for similar relief. In the said suit, the plaint was rejected, and the Order was upheld by the Division Bench.

8. A reading of the Impugned Order shows that the plaint was rejected mainly on the ground that the Plaintiff had taken a vague plea while filing the first suit.

9. The enabling power of the Court to reject the plaint under Order VII Rule 11 of the CPC, is circumscribed by the grounds enlisted under Clauses (a) to (e) therein. For the sake of brevity and convenience, Order VII Rule 11 of the CPC is reproduced herein below:

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

(a) where it does not disclose a cause of action;



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- (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 written 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.”

10. The Defendant claims that the subsequent suit filed by the Plaintiff is barred by law (i.e. principles of *res judicata*).

11. It is pertinent to note herein that Clause (d) provides that the suit should appear, from the statements in the plaint, to be barred by law. For recording a finding that the suit is barred by *res judicata*, the Court is required to examine the pleadings in the previous suit and the final judgment passed. In absence thereof, it will not be appropriate to record a finding based upon *res judicata*.

12. Such documentary evidence is required to be produced and proved in evidence. Hence, it was not appropriate for the learned Single Judge to reject the plaint under Order VII Rule 11 of the CPC on the ground that the subsequent suit was barred by *res judicata*.

13. Moreover, the learned Single Judge has also erred in rejecting the plaint on the ground that the suit property is located outside Abadi of the village. In Para 1 of the plaint, the Plaintiff has specifically averred that late Sh. Mam Raj was the owner of the disputed property which was located within Abadi and old Lal Dora.

14. A factual dispute, such as this, as to whether the property is located within Abadi or not, is required to be decided after the parties



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are permitted to lead evidence.

15. Rejection of the plaint at the threshold has a very serious consequence. The party is not allowed to proceed with a suit from the very beginning. Before rejecting the plaint, the Court is required to be absolutely certain that the plaint is liable to be rejected on the grounds enlisted under Order VII Rule 11 of the CPC.

16. Keeping in view the aforesaid facts and discussion, the Impugned Order being not sustainable, is set aside.

17. The suit is restored to its original number.

18. The parties, through their counsels, are directed to appear before the learned Single Judge on 08.12.2025.

19. Accordingly, the present Appeal stands disposed of in the aforesaid terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 28, 2025/ v/va

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BHATIA
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