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

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Reserved on: 12.03.2026***Date of decision: 29.05.2026***+ RFA(OS) 35/2019, CM APPL. 16423/2019, CM APPL. 16426/2019 &
CM APPL. 37069/2023

SUBODH JAIN

.....Appellant

Through: Ms. Suman Kapoor with Mr.
Surendera Mohan Prasad, Ms. Monika
Chaudhary, Advs. along with
Appellant in person.

versus

SUBHASH CHAND JAIN & ORS

.....Respondents

Through: Ms. Sangeeta Jain, Adv. for R-1 along
with Respondent No.1 in person.
Mr. Shiv Charan Garg with Mr. Imran
Khan, Advs. for R-2 to 4.**CORAM:****HON'BLE MR. JUSTICE VIVEK CHAUDHARY****HON'BLE MS. JUSTICE RENU BHATNAGAR****J U D G M E N T**

1. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908, ("CPC") read with Section 10 of the Delhi High Court Act, 1966, assailing the Judgment dated 19.07.2018, passed by the learned Single Judge in CS (OS) No. 2582 of 2014, whereby the plaint filed by the Appellant was rejected under Order VII Rule 11 (a) & (d) of the CPC, and the Appellant's application under Order VI Rule 17 of the CPC seeking amendment of the plaint was also dismissed.



2. The dispute *inter se* the parties pertain to ownership of the ground floor of the property bearing No. 2771, Main Qutab Road, Sadar Bazar Delhi (“property in-dispute”). The Appellant and Respondent No.1 are stated to be the grandsons of Late Shri Jagmender Dass Jain, being sons of Late Shri Sukhbir Singh Jain and Late Shri Prem Chand Jain respectively.

3. As pleaded in the plaint, Late Shri Jagmender Dass Jain was the owner of two immovable properties, namely: (i) property bearing No.19-B, Veer Nagar, Jain Colony, Near Rana Pratap Bagh, Delhi; and (ii) property bearing No.2771, Main Qutab Road, Sadar Bazar, Delhi. He executed a Will dated 26.03.1991, whereunder life interest in the aforesaid properties was created in favour of his two sons, namely, Late Shri Prem Chand Jain and Late Shri Sukhbir Singh Jain, while the ultimate ownership rights were intended to devolve upon the Appellant and Respondent No.1. It was further pleaded that the said Will prohibited alienation of the properties by the life estate holders. After the demise of Late Shri Jagmender Dass Jain on 28.10.1992, a family arrangement dated 05.01.1993 came to be executed amongst the family members acknowledging and affirming the Will dated 26.03.1991. The Appellant further pleaded that subsequent probate proceedings were initiated by his father and uncle on the basis of alleged Wills dated 03.06.1991 and 29.07.1992, which according to the Appellant were forged and fabricated. During the pendency of such probate proceedings, his father and uncle entered into an alleged compromise dated 01.02.2008 culminating in an order dated 12.05.2008, whereby they purportedly treated themselves as absolute owners of different portions of the suit properties. According to the Appellant, the said compromise could not extinguish or prejudice his vested rights flowing from the Will dated 26.03.1991 and the family arrangement dated



05.01.1993; particularly since he was not a party to the compromise dated 01.02.2008.

4. Late Shri Sukhbir Singh Jain thereafter executed a registered sale deed dated 05.08.2011 in favour of Respondent Nos.2 to 4 in respect of one shop situated on the ground floor of property bearing No.2771, Main Qutub Road, Sadar Bazar, Delhi. According to the Appellant, he had no authority to alienate the said property as he merely held a life interest under the Will dated 26.03.1991. The Appellant thus sought declaration, partition and permanent injunction in respect of the suit properties.

5. During the pendency of the suit, Respondent Nos.2 to 4 filed I.A. No.24358/2015 under Order VII Rule 11 of the CPC seeking rejection of the plaint. It is the Appellant's case that when the said application was taken up for consideration, the Appellant sought leave to amend the plaint in order to incorporate subsequent developments and consequential reliefs, and accordingly filed I.A. No.4767/2017 under Order VI Rule 17 of the CPC. By way of the Impugned Order, I.A. No.24358/2015 filed under Order VII Rule 11 of the CPC by Respondent Nos.2 to 4 was allowed and the I.A. No.4767/2017 filed by the Appellant under Order VI Rule 17 of the CPC seeking amendment of the plaint was rejected.

6. By way of the Impugned Judgment, the application under Order VI Rule 17 of the CPC seeking amendment of the plaint was dismissed as the proposed amendment sought to substantially change the nature of the suit from one for partition into a suit seeking possession and declaration. The learned Single Judge found that the Plaintiff was fully aware, even at the time of filing of the suit, of the earlier family settlement, the compromise recorded in the probate proceedings, and the sale executed in favour of the subsequent



purchasers. It was further held that the Plaintiff had, in earlier proceedings, expressly accepted the settlement and had even stated before the Court that he was satisfied with the arrangement arrived at between the family members. In these circumstances, the Court held that the Plaintiff could not be permitted to reopen settled issues by way of amendment, particularly when and observed that certain earlier proceedings and statements allegedly attributable to the Plaintiff had not been fully disclosed. Accordingly, finding the amendment to be lacking in *bonafides* and serving no useful purpose, the application under Order VI Rule 17 CPC was dismissed.

7. Furthermore, the application under Order VII Rule 11 of the CPC was allowed by the learned Single Judge by holding that the plaint failed to disclose any surviving cause of action in favour of the Appellant. The Court found that the disputes relating to the properties in question had already been resolved through a family settlement and compromise proceedings, pursuant to which the properties stood partitioned and exclusive rights had accrued in favour of the respective parties. The Appellant had not only participated in the earlier proceedings but had also accepted the settlement and withdrawn earlier litigations in terms thereof. The Court further held that once the partition had already taken effect and rights had crystallized, the Appellant could not seek a fresh partition of the same properties by instituting the present suit. The suppression of material facts and the Appellant's attempt to reopen a concluded family arrangement also weighed with the Court. In view thereof, the plaint was held to be liable to rejection under Order VII Rule 11(a) and (d) CPC, and the application was accordingly allowed.

8. The impugned order is assailed by the Appellant submitting that the learned Single Judge fell into manifest error in dismissing the Appellant's



application under Order VI Rule 17 of the CPC simultaneously with allowing the application under Order VII Rule 11 of the CPC. The Appellant submitted that once an application seeking amendment of the plaint was pending consideration, the Court was first required to adjudicate the amendment application and consider the maintainability of the suit on the basis of the amended plaint, particularly when the amendment sought incorporation of consequential reliefs arising from subsequent events. It is urged that the settled position of law mandates that an amendment application, especially one intended to determine the real controversy between the parties, ought to be considered liberally prior to deciding an application for rejection of plaint, as the amended plaint alone would constitute the basis for examining whether a cause of action survives.

9. It is further submitted that the learned Single Judge erred in rejecting the plaint under Order VII Rule 11 of the CPC by entering into disputed and contested questions of fact which could only have been adjudicated upon trial after the parties have led the evidence. It is contended that the learned Single Judge, while exercising jurisdiction under Order VII Rule 11 of the CPC, was required to confine consideration strictly to the averments contained in the plaint and the documents relied upon by the Appellant, without embarking upon an enquiry into disputed issues relating to acquiescence, estoppel, validity of the compromise dated 01.02.2008, and the effect of the alleged family settlement. According to the Appellant, the plaint clearly disclosed a triable cause of action arising from the Will dated 26.03.1991, the family arrangement dated 05.01.1993, and the subsequent sale deed dated 05.08.2011 executed in favour of Respondent Nos.2 to 4. It is submitted that the learned Single Judge virtually conducted a mini trial at the threshold stage



by recording findings on disputed factual aspects and by treating the compromise between the predecessors-in-interest as binding upon the Appellant, despite the same being seriously disputed and requiring evidence.

10. We have heard learned counsel for the parties and perused the record.

11. The scope and ambit of jurisdiction under Order VII Rule 11 CPC is no longer *res integra*. It is now well settled that while exercising jurisdiction under Order VII Rule 11 of the CPC, the Court is required to confine itself to the averments made in the plaint and the documents relied upon by the plaintiff. The defense raised by the defendants or disputed questions requiring adjudication cannot ordinarily be examined at such stage. The Court is required to assume the averments in the plaint to be correct and determine whether a cause of action is disclosed as held in ***Dahiben v. Arvindbhai Kalyanji Bhanusali***, (2020) 7 SCC 366, as under:

“23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn.



Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.”*

12. The Supreme Court has repeatedly cautioned against converting proceedings under Order VII Rule 11 CPC into a full-fledged adjudicatory exercise. In **Popat and Kotecha Property v. State Bank of India Staff Association**, (2005) 7 SCC 510, it was held as below:

"13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In Saleem Bhai v. State of Maharashtra [(2003) 1SCC 557] it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for



deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. *In I. T. C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.*

16. *The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T. V. Satyapal [(1977) 4 SCC 467].)*

17. *It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.*

18. *In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*

19. *There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be*



construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised."

13. In the present case, the plaint specifically pleads that the Will dated 26.03.1991 created merely a life interest in favour of the fathers of the Appellant and Respondent No.1 and that the ultimate ownership rights vested in the Appellant and Respondent No.1. The plaint further specifically challenges the compromise dated 01.02.2008 as being incapable of extinguishing the Appellant's rights and also challenges the sale deed dated 05.08.2011 on the ground that the executant/Late Shri Sukhbir Singh Jain lacked authority to alienate the property.

14. Whether the compromise dated 01.02.2008 enlarged the life estate into absolute ownership; whether the Appellant was bound by the compromise; whether the Appellant had consciously waived or abandoned his rights; whether the sale deed executed in favour of Respondent Nos.2 to 4 was valid; and whether the Appellant's statements in prior proceedings constituted estoppel or acquiescence, are all questions which necessarily required evidence and adjudication at trial.



15. In our considered opinion, the learned Single Judge, while exercising jurisdiction under Order VII Rule 11 CPC, travelled beyond the limited scope of enquiry permissible at that stage by entering into adjudication of disputed questions concerning title, succession, estoppel, acquiescence and binding effect of prior settlements. Findings such as the Appellant having *accepted* the settlement, the properties having already been partitioned, and Late Shri Sukhbir Singh Jain being exclusive owner competent to execute the sale deed, are findings squarely falling within the realm of adjudication of facts on merits.

16. The plaint, on a meaningful and holistic reading, discloses a triable cause of action. The mere fact that the Appellant may or may not ultimately succeed on merits could not furnish a valid ground for rejection of the plaint at the threshold stage.

17. We also find merit in the submission advanced on behalf of the Appellant that the application under Order VI Rule 17 CPC ought to have received more liberal consideration before adjudicating the application under Order VII Rule 11 CPC.

18. It is a settled principle that once an application for amendment of pleadings is pending consideration, particularly where such amendment seeks to bring on record material facts necessary for complete and effective adjudication of the dispute, the Court is first required to determine the amendment application before proceeding to examine whether the plaint deserves rejection. The maintainability of the suit necessarily has to be tested on the basis of the plaint as it would stand after adjudication of the amendment application and not on the basis of the unamended pleadings alone.



19. The Supreme Court in **Rajesh Kumar Aggarwal v. K.K. Modi**, (2006) 4 SCC 385, reiterated the settled principles governing amendment of pleadings and held, that procedural law is intended to facilitate adjudication on merits and not to obstruct the course of justice on technical considerations, as under:

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised



in the larger interest of doing full and complete justice to the parties before the court.

19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

20. In the present matter, the amendment sought by the Appellant was intrinsically connected with the subsequent alienation alleged to have been made in favour of Respondent Nos. 2 to 4 and the consequential reliefs flowing therefrom. The proposed amendment neither introduced a completely foreign case nor altered the foundational basis of the dispute. Rather, it sought to effectively and comprehensively adjudicate the rights claimed by the parties in light of subsequent developments of which the Appellant now claims knowledge. The amendment application, in these circumstances, deserved to be allowed and is, accordingly, allowed.

21. Further, as already held above, at the stage of considering an application under Order VII Rule 11 CPC, the Court was not required to conclusively adjudicate disputed questions relating to title, succession, estoppel, acquiescence or the binding effect of prior proceedings. Such issues would appropriately arise for consideration only after completion of pleadings and adjudication on merits in accordance with law. Thus, we are also unable to sustain the finding returned under Order VII Rule 11(d) CPC. For rejection under clause (d), the bar to the suit must be apparent on the face of the plaint itself. The issue must be capable of determination without requiring any enquiry into disputed facts brought on record by the defendants.



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In the present case, the alleged bar is sought to be inferred from prior settlements, compromise proceedings and conduct attributable to the Appellant. These all disputed factual matters are brought on record by the defendants/Respondent Nos. 2 to 4 and are incapable of determination merely on a demurrer. Consequently, rejection of the plaint under Order VII Rule 11(d) CPC was legally unsustainable. Accordingly, the impugned Judgment dated 19.07.2018 passed in CS(OS) No.2582/2014 cannot be sustained and is, hereby, set aside. The application filed by the Appellant under Order VI Rule 17 CPC is allowed, whereas the application preferred by the Respondents under Order VII Rule 11 CPC stands dismissed.

22. The parties shall appear before the learned Single Judge on 13.07.2026.

23. The appeal is accordingly allowed. Pending applications, if any, also stand disposed of.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MAY 29, 2026/kp/tr