

Tarun Singh Saharan vs Meeta Singh & Ors. on 4 April, 2025

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 18th February 2025

Pronounced on: 4th April 2025

+ I.A. 5371/2024 in CS(OS) 252/2022

TARUN SINGH SAHARAN

Through: Mr. Mukesh Anand, Adv.

versus

MEETA SINGH & ORS..

Through: Mr. Luqman S. Hasan, Mr. Shubham Awasthi, Mr. Harsh Ms. Priya Kaur, Advocates f 1 & 2.Def
Mr. Dilpreet Singh Gandhi, Advocate for D-4.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 5371/2024 (Under Order VII Rule 11 of CPC)

1. This application has been filed on behalf of defendant nos. 1 & 2 seeking rejection of plaint under Order VII Rule 11 of Code of Civil Procedure 1908 ('CPC') as being devoid of any cause of action.

2. The background facts of the matter are that plaintiff filed a suit for partition of all the properties of late Sh. Gurbachan Singh Saharan ('deceased'). Plaintiff is the son; defendant no.1 is the widow and defendant no.2 is the daughter of the deceased.

3. The plaintiff claimed that he was looking after the entire family, including the time when his father was unwell, however, he passed away on 19th April 2021, leaving behind the above noted legal heirs. During his lifetime, the deceased acquired various immovable and movable properties which he left behind after his demise. The deceased also acquired various movable and immovable assets in the name of a HUF i.e. "Gurbachan Singh HUF" in which deceased, plaintiff and defendant nos. 1 & 2 were members and deceased was the Karta.

4. It is stated by plaintiff that he had undergone a liver transplant to benefit his father, and it was the wish of his father, that since he had saved his life and donated him a liver, he would get 75% share in all movable and immovable assets left by him, either in his name or in the HUF, defendant no.2 would be entitled for 25% share in the properties and defendant no.1 would have life interest in the

residence at House No.29, Surya Niketan, Delhi-110092. As per him, it was further agreed, that plaintiff will be under obligation to take care and maintain his mother i.e. defendant no.1. In this regard, on 6th July 2021, an Oral Family Settlement had been arrived at between plaintiff, defendant no.1 and defendant no.2, post demise of late Sh. Gurbachan Singh Saharan.

5. Plaintiff claims that defendant no.3 started living with defendant no.2 and started interfering with the affairs of the family. Defendant no.1 started creating distance from plaintiff and in the month of August- September 2021, placed three bodyguards, who had restrained the plaintiff from going to the floor of defendant nos.1 and 2.

6. After plaintiff was threatened by defendant nos.2 and 3, through the said bodyguards, he filed a complaint on 13th September 2021 before the SHO, PS Anand Vihar. Thereafter, in October 2021, another police complaint was filed by plaintiff, when he claimed assault by the bodyguards of defendants.

7. Discord between plaintiff and defendants increased and FIR No.14/2022, P.S. Anand Vihar under sections 354/354A/354B/506/509 of the Indian Penal Code 1860 ('IPC') was registered by the defendants against the plaintiff. Plaintiff filed an anticipatory bail application before ASJ Karkardooma Courts and during the hearing, the IO showed the Will dated 20th May 2013 of the deceased father, on the basis of which, plaintiff has been denied his rights and share in the estate of his late father.

8. On this basis, plaintiff has sought a decree of partition in respect of all the other parties, a decree of declaration for declaring the Will dated 20th May 2013 as null and void, a declaration in favour of plaintiff declaring his 75% share in the movable and immovable assets as agreed under the Oral Family Settlement dated 6th July 2021 and a decree of permanent injunction against defendants from alienating the properties and other attendant reliefs.

9. Counsel for defendants submitted that plaintiff had no cause of action considering that firstly, the Will dated 20th May 2013 was duly registered and therefore, there will be a presumption of the validity of the Will; and secondly, that the plaint has a mere allegation of fraud, which is insufficient under Order VI Rule 4 of CPC since plaintiff was obligated to give full particulars. On the latter submission, counsel for defendants relied upon decision in *Mayar (H.K.) Ltd. & Ors. v Owners & Parties, Vessel M.V. Fortune Express & Ors.* (2006) 3 SCC 100 and *Bishundeo Narain & Anr. v Seogeni Rai & Anr.* 1951 SCC 447 (Constitution Bench). He therefore, contended that in the absence of specific pleadings and being faced with a registered Will, there was no cause of action which would accrue in favour of plaintiff.

10. Counsel for plaintiff countered by submitting that firstly, the plaint had substantial averments that the Will was forged and fabricated; secondly, the provisions of Order VI Rule 4 of CPC will not apply since they have not claimed misrepresentation, fraud, breach of trust, wilful default or undue influence and therefore, there was no real necessity of giving particulars; thirdly, that the plaint has to be seen in its totality and not in an isolated manner; fourthly, that the validity of the Will cannot be assessed merely by registration, but the contesting parties are entitled to raise an allegation that

it was executed in suspicious circumstances; and fifthly, there was no probate of the Will which had been sought by the defendants till date. For this, he relies upon the following judgments:

a. Mohammad Khalil Khan & Ors. v Mahbub Ali Mian & Ors. 1948 SCC OnLine PC 44 (Privy Counsel) (paras 46, 51, 61-63) on the issue that the phrase 'cause of action' means every fact, that will be necessary for plaintiff to prove, in order to assert his right.

b. Rani Punrnima Debi & Anr. v Kumar Khagendra Narayan Deb & Anr. 1961 SCC OnLine SC 89 (paras 17, 23, 24) on the issue that the High Court was not right in relying mainly on the registration, to hold that all suspicions relating to Will had been dispelled. Relevant extracts are as under:

"17. Let us now turn to the registration of the will, for it is on the registration that the High Court has relied strongly to dispel whatever it also considered suspicious in this case. The contention of Mr Desai on behalf of the appellants in this connection is that registration may be an added circumstance in favour of the genuineness of the will and may be taken into account in considering whether suspicious circumstances had been dispelled, but the High Court was not right on the facts of this case in relying mainly on the registration to hold that all suspicions relating to this unnatural will had been dispelled. There is no doubt that this will was registered on January 27, 1944 and there is an endorsement on the will to the effect that the testator had admitted the execution of it. It will therefore be necessary to examine the circumstances more closely than the High Court seems to have done in this case. It appears that an application was made by the mukhtar-i-am of the testator (and not by the testator himself) on January 16, 1944 before the Sub-Registrar for registration of the will on commission. The Sub-Registrar himself did not go to execute the commission but sent a clerk of his named Arabali, though the reason given in the application for the issue of commission viz. respectability was not justified in law and no commission should have been issued at all. This Clerk was apparently a resident of the same area in which the testator was living and knew him from before. It is a matter worthy of note in the circumstances of this case that the person who went to inquire from the testator whether he had executed the will was not the Sub- Registrar himself who would be a more responsible officer than his clerk. Anyhow, the evidence of the clerk is that he found the testator quite hale and hearty. The testator came out from the inner apartment to the verandah of the house and admitted the execution of the will. Thereafter the testator signed at the bottom of the will in token of his having admitted the genuineness of the will and Dehiram Bora identified the testator. Thereafter Arabali took the document to the office of the Sub-Registrar and it was registered. It is on this registration that the High Court has relied very strongly for dispelling the suspicion arising in this case.

...

23. There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have not been acted upon : (see, for example, *Vellasamay Servai v. L. Sivaraman Servai* [(1930) ILR 8 Ran 179] , *Surendra Nath Lahiri v. Jnanendra Nath Lahiri* [AIR 1932 Cal 574] and *Girji Datt Singh v. Gangotri Datt Singh* [AIR 1955 SC 346] . Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting. ...

24. The question therefore is whether in the circumstances of the present case the evidence as to registration discloses that the testator knew that he was admitting the execution of a will when he is said to have put down his signature at the bottom of the will in the presence of Arabali. We have scrutinized that evidence carefully and we must say that the evidence falls short of satisfying us in the circumstances of this case that the testator knew that the document the execution of which he was admitting before Arabali and at the bottom of which he signed was his will. Therefore we are left with the bald fact of registration which in our opinion is insufficient in the circumstances of this case to dispel the suspicious circumstances which we have enumerated above. We are therefore not satisfied about the due execution and attestation of this will by the testator and hold that the propounder has been unable to dispel the suspicious circumstances which surround the execution and attestation of this will. In the circumstances, no letters of administration in favour of the respondent can be granted on the basis of it."

(emphasis added) c. *Sopan Sukhdeo Sable & Ors. v Asstt. Charity Commr. & Ors.* (2004) 3 SCC 137 on the issue that in assessing rejection under Order VII Rule 11 of CPC, no particular plea is to be considered but averments in the plaint as a whole have to be seen.

d. Mayar (H.K.) Ltd. & Ors. v Owners & Parties, Vessel M.V. Fortune Express & Ors. (2006) 3 SCC 100 (paras 11 &

12), that Order VII Rule 11 of CPC would be considered on a meaningful and not formal reading of the plaint. e. Dhani Ram (Died) through LRs & Ors. v Shiv Singh 2023 SCC OnLine SC 1263 (paras 9, 18 and 21) where the Supreme Court has affirmed the Trial Court's finding that registration of Will, will not be sufficient to prove its validity.

"9. The Trial Court rightly opined that mere registration of the Will would not be sufficient to prove its validity, as its lawful execution necessarily had to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), and Section 63 of the Indian Succession Act, 1925 (for brevity, 'the Succession Act'). Thereupon, the Trial Court found that the evidence of the attesting witnesses to the Will, viz., Lok Nath Attri (DW-2) and Chaman Lal (PW-4), was contradictory as they did not speak to the same effect. In these circumstances, the Trial Court held that valid execution of the Will was not proved. ...

18. In this regard, it would be apt to note the essential requirements in law to prove a Will. Section 68 of the Evidence Act reads as under:

"68. Proof of execution of document required by law to be attested. - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

...

21. It is well settled that mere registration would not sanctify a document by attaching to it an irrebuttable presumption of genuineness. The observations of this Court in Rani Purnima Debi v. Kumar Khagendra Narayan Deb, which were referred to by the Himachal Pradesh High Court, are of guidance in this regard and are worthy of extraction. These observations read as under:

"There is no doubt that if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the

registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a Will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the fact that the Will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered Wills have not been acted upon Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will; though the fact that there has been registration would be an important circumstance in favour of the Will being genuine if the evidence as to registration establishes that the testator admitted the execution of the Will after knowing that it was a Will the execution of which he was admitting."

(emphasis added) f. Geetha & Ors. v Nanjundaswamy & Ors. 2023 SCC OnLine SC 1407 (paras 2 and 6) where Order VII Rule 11 was dismissed on the basis that plaint is to be read meaningfully and as a whole, taking it to be true.

"2. In this appeal, we are called upon to decide two questions. The first relates to the true and correct application of the principle underlying the 'rejection of plaints' under Order VII Rule 11, Civil Procedure Code, 1908, to the facts of the case. The second question relates to the legality of rejection of a plaint in part. For the reasons to follow, we have held that the High Court has committed an error in passing the order impugned, on both counts. First, by misapplying the well-established principles informing Order VII Rule 11 of the CPC, and second, by rejecting the plaint in part, which is again contrary to the law on the subject. We have, therefore, allowed the appeal and dismissed the application under Order VII Rule 11, CPC. We will first indicate the necessary facts.

...

6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* (2020) 7 SCC 366, as follows:

"23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds

contained in this provision. 23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In *Azhar Hussain v. Rajiv Gandhi* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12) "12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. 23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

...

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.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* case [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

(emphasis added) *g. Eldeco Housing & Industries Ltd. v Ashok Vidyarthi & Ors.* 2023 SCC OnLine SC 1612 (Paras 17 to 19) on the issue of principles attracted under Order VII Rule 11 of CPC.

"17. In *Kamala v. K. T. Eshwara Sa* (2008) 12 SCC 661, this Court opined that for invoking clause (d) of Order VII Rule 11 CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below:

"21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments

made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face disclose no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained."

(emphasis added) h. Neelmani Singh v Tikka Brijinder Singh Bedi & Ors. 2023:DHC:2619 where the issue was similar, in that Will executed was alleged to be forged and fabricated and Court stated that it was a matter of trial and cannot be decided at the stage of an application under Order VII Rule 11 of CPC.

i. Neena Kapoor & Ors. v Vishnu Khanna 2024:DHC:1306 DB where the Court relied on Geetha (supra) highlighting that the plaint is to be read as a whole to disclose cause of action. The relevant paragraphs are extracted as under:

"10. Principles relating to applications preferred under Order VII Rule 11(a) of CPC are clear and transparent. It is a settled position of law that the true test is whether the plaint, when read as a whole, discloses a cause of action. This test was recently reiterated by the Hon'ble Supreme Court in para 7 of Geetha, D/o Late

Krishna v.

Nanjundaswamy, 2023 SCC OnLine SC 1407, which is extracted below:

"7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action the plaint, the plaint shall be rejected."

11. Furthermore, pursuant to an application under Order VII Rule 11 of the CPC, a plaint cannot be rejected in part. This principle has been explained by the Hon'ble Supreme Court in Madhav Prasad Aggarwal v. Axis Bank Ltd., (2019) 7 SCC 158, in the following paragraph:

"12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-

compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly."

(emphasis added) Analysis

11. For the purposes of assessing the plea of defendants under Order VII Rule 11 of CPC, of the plaint being devoid of a cause of action, it would be imperative to first assess and examine the plaint itself.

12. Relying on the decision of the Supreme Court in Geetha (supra), where it is stated in para 7 (as extracted above), that the plaint would have to be read meaningfully and as a whole, the defendants effectively submits, that in view of the registered Will, the plaintiff will have no cause of action, as also that he has not given necessary particulars relating to the plea of fraud, misrepresentation, use of coercion and undue influence.

13. Firstly, by simplicitor raising an issue, and propounding a registered Will, in itself, will not divest the plaintiff for a cause of action. It is normal for suits to be filed seeking a declaration that the Will propounded by the defendants should be declared null and void, or non- est and unenforceable, being forged and fabricated or otherwise, executed under undue influence or under suspicious circumstances.

14. The plaintiff is right in relying upon the decision in Dhani Ram (supra) where the Court noted in para 9 [as extracted above in para 10

(e)] that the Trial Court had correctly opined that mere registration of the Will would not be sufficient to prove its validity. The appellate court was inclined to overlook the discrepancies in the evidence and reverse the findings of the Trial Court. However, the High Court, being the second appellate court, had also opined that it was enough to entertain some suspicion and mere registration of the Will would not suffice, to dispel the suspicious circumstances. The very execution of the Will was not proved in terms of Section 68 of the Evidence Act 1872 and Section 63 of the Succession Act 1925. The Supreme Court goes ahead and examines the evidence and found that the propounder of the Will, had failed to prove the execution of the Will. In Dhani Ram (supra), the Court relied upon its previous observations in Rani Purnima Debi (supra).

15. A perusal of the plaint would show that plaintiff has set out a sequence of events which as per him, led to the discord between the plaintiff on one hand and the defendants on the other, which amplified as time went by, to the extent that there were bodyguards placed by the mother and the sister, defendant nos. 1 and 2, respectively, in order to prevent access of plaintiff. Thereafter, counter FIRs were also registered and the plaintiff was forced to seek anticipatory bail, during which proceeding, he came to know of the said Will.

16. It is stated inter alia in paras 21, 25 and 30 of the plaint, that the said Will was forged and fabricated; the sale deeds in respect of certain properties were absolutely illegal, invalid, void and sham documents and did not create any interest. The question would be whether these averments would amount to sufficient particulars as for Order VI Rule 4 of CPC. In this regard, the reliance of the defendants on Bishnudeo Narain & Anr. v Seogeni Rai & Anr. 1951 SCC OnLine SC 34 has to be assessed. The Constitution Bench in para 22 of the said decision stated as under:

"22. We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code."

(emphasis added)

17. However, in Mayar (H.K.) Ltd. (supra), it is stated in para 12 (extracted below), specifically excepting out cases where pleadings relied on in regard to misrepresentation, wilful default, influence, or of the same nature, from situations where material facts are required to be stated:

"12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants."

(emphasis added)

18. The Court cannot shut its eyes to the fact that some particulars have been pleaded by the plaintiff and that it would not be for this Court to assess merits of the matter, while adjudicating the application under Order VII Rule 11 of CPC at this stage. For this, decision of Supreme Court in *Kamala v K.T. Eshwara SA & Ors.* (2008) 12 SCC 661, which was also cited in *Eldeco Housing & Industries Ltd. v Ashok Vidyarthi & Ors.* 2023 SCC OnLine SC 1612 (supra), is relied upon, in particular para 22, which is extracted as under:

"22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision."

(emphasis added)

19. On reading of the plaint as a whole, it cannot be said that no cause of action accrues in favour of the plaintiff. Having been faced with the Will propounded by the defendants during the anticipatory bail proceedings, the plaintiff has gone on to categorically state that the Will is forged and fabricated. The registration of the Will, as noted above, does not give an inviolable right to the defendants in their favour and deplete the plaintiff of any right to object to the authenticity of the Will. To this day, defendants have not filed any probate petition in respect of the Will and therefore, authenticity of the Will, if any, has not been assessed by any court. It would therefore, be in this suit that the same will be assessed, basis the evidence led by the parties, considering that the plaintiff has sought a declaration that the Will is forged and fabricated and is invalid, null and void.

Otherwise, the validity of the Will may be assessed in a probate proceeding, if the defendants choose to initiate it. Once the Will stands proved, the case set up by plaintiff (of an oral settlement), will collapse.

Conclusion

20. The claim of plaintiff is that by virtue of the purported Will executed by the deceased father; the plaintiff had been completely divested of all the estate of the father. The averments in the plaint are naturally denied by the defendants in the written statement. However, all these matters will be an issue of trial and the Court, at this stage, is not inclined to reject the plaint under Order VII Rule 11 of CPC.

21. Accordingly, for the reasons stated above, the application is dismissed.

(ANISH DAYAL) JUDGE APRIL 4, 2025/SM/na