

Smt. Harinder Kaur vs Shri Maninder Pal Singh & Ors. on 4 April, 2025

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 20th February
Pronounced on: 4th April

+ CS(OS) 540/2018, I.A. 1721/2019 & I.A. 4728/2022
SMT. HARINDER KAUR (DECEASED) THROUGH LRPlaintiff
Through: Mr. Pawan Jit Singh Bindra
along with Mr. Lakshay Dha
S.S. Chadha, Advs, and
Bijoylashmi Das.
versus

SHRI JATINDER PAL SINGH & ORS.Defendants
Through: Mr. Amit Singh Chauhan, Mr. Zafar
Khurshid, Ms. Shaima Masood, Mr.
Udit Chauhan, Advs. for D-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 1720/2019 (Application under Order VII Rule 11 of CPC)

1. The present application has been filed by defendant no.2 (erstwhile defendant no.3)/applicant under Order VII Rule 11 of Code of Civil Procedure, 1908 ('CPC'), seeking rejection of the plaint on the ground that it is devoid of any cause of action.

2. Plaintiff, defendant nos.1 & 2 are all sons of Late Shri Kulwant Singh and Late Smt. Harinder Kaur, both of whom have since passed away. Shri Kulwant Singh passed away on 8th October 2018, followed by Smt. Harinder Kaur's demise on 26th January 2022. The suit properties in question are as under:

(i) Property bearing No. A-69, measuring 240 Sq. Yds., situated at Vishal Enclave, New Delhi - 110 027.

(ii) Plot bearing No.59, situated at New Rohtak Road, Anand Parbat Industrial Area, New Delhi - 110 005 admeasuring 200 Sq. Yds.

(iii) Land measuring 19 Kanals, o Marlas, bearing Hadbast No.278, situated at Village Tangori, Tehsil Mohali, District Ropar (Punjab).

While two properties are in New Delhi, one property is an agricultural property in District Ropar, Punjab.

3. The suit was originally filed by Late Smt. Harinder Kaur, asserting her entitlement to a 1/4th share in the estate of Late Shri Kulwant Singh. Defendant no.2, however, contends that Late Shri Kulwant Singh had executed a registered Will dated 31st March 2015, under which he bequeathed his properties in a specific manner. Additionally, defendant no.1/ Shri Jatinder Pal Singh (erstwhile defendant no. 2) had filed an affidavit on record dated 31st October 2018, giving his no-objection in favour of Late Smt. Harinder Kaur, regarding 1/4th undivided and unspecified share in the immovable and movable properties/ assets.

4. Following the demise of Smt. Harinder Kaur, her share in the movable and immovable properties devolved upon defendant no. 1 / Shri Maninder Pal Singh by virtue of a registered Will dated 09th March 2020.

5. Subsequently, original defendant no.1, Shri Maninder Pal Singh, filed an application under Order XXII Rule 17 of CPC (I.A. 4729/2022) for transposition as plaintiff. Defendant no.2 objected, stating that the stand taken by defendant no.1/ Shri Maninder Pal Singh was contrary to that of Late Smt. Harinder Kaur. The said application was disposed of vide order dated 28th October 2022. An amended memo of parties was thereafter filed on 17th December 2022, reflecting the status of Late Smt. Harinder Kaur's as deceased through her legal representative, Shri Maninder Pal Singh.

6. Plaintiff seeks partition of the suit properties, claiming they should be divided among the legal heirs. Defendant no.2, however, relies on the registered Will dated 31st March 2015 to dispute the claim, asserting that the properties stand bequeathed as per its terms.

Submissions by the applicant/defendant no.2

7. Plaintiff is guilty of concealing material facts, as they were aware of the registered Will but did not disclose it in the plaint. This assertion is based on affidavits of Shri Harbhajan Singh Sahni and Shri Swaran Singh, who are close associates/relatives of the testator.

8. It is stated that after the demise of Late Kulwant Singh on 8th October 2018, the said Will was read out to all the family members, including plaintiff and defendant nos.1 & 2, and each clause was explained to them in vernacular and otherwise. The said affidavits further state that the family members were informed that they could obtain a copy of the Will from the concerned Registrar. Therefore, plaintiff and all other family members were fully aware of the registered Will; however, this was completely omitted to be mentioned in the suit.

9. To substantiate this, applicant's counsel relied on *Poppat Jamal and Sons v. N.M. Venkatachalapathy*, 2006 SCC OnLine Mad 1174, wherein the Court held that a party cannot seek an equitable relief if they have acted unfairly or in bad faith. Relevant paragraph is extracted as under:

"10. The above facts would only go to show that the respondents by playing fraud and misrepresentation have filed the Suit. The plaintiffs have not approached the Court with clean hands and are guilty of fraud, suppression of facts and misrepresentation and as such they are not entitled for any relief. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage as has been held by the Apex Court in S.P. Chengalvaraya Naidu v. Jagannath, 1994 (1) SCC 1. This aspect of the matter has also been considered by the Hon'ble Supreme Court in its decisions in Roshan Deen v. Preeti Lal, 2002 (1) SCC 100; Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, 2003 (8) SCC 311;

Ashok Leyland Ltd. v. State of T.N., 2004 (3) SCC 1; and State of A.P. and another v. T. Suryachandra Rao, 2005 (6) SCC 149. In view of the settled legal position of law, the case of the plaintiffs has to be thrown out at the threshold and in this case, it is the duty of the Court to reject the Plaint."

(emphasis added)

10. The agricultural land in Ropar cannot be partitioned at the behest of the plaintiff, considering that the said relief is barred by law and must instead be sought before the Revenue Officer in Punjab. For this, the applicant/ defendant no.2 relied upon the relevant sections of The Punjab Land Revenue Act, 1887 ('PLR Act'). For ease of reference, the said Section 158 is extracted as under:

"158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers:-

Except as otherwise provided by this Act- (1) a Civil Court shall not have jurisdiction in any matter which the [State Government] or a Revenue-

officer is empowered by this act to dispose of or take cognizance of the manner in which the [State Government] or any revenue-officer exercises any powers vested in it or him by or under this Act; and in particular--

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely: -

(i) any question as the limits of any land which has been defined by a revenue-officer as land to which this Act does or does not apply;

(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such;

(iii) any claim to the office of kanungo, or village-officer , or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

(iv) any notification directing the making or revision of a record-of-rights;

(v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;

(vi) the correction of any entry in a record-of-rights, annual record or register of mutations;

(vii) any notification of the undertaking of the general re-assessment of a district or tahsil having been sanctioned by the² [State Government];

(viii) the claim of any person to be liable for an assessment of land-revenue or of any other revenue assessed under this Act ;

(ix) the amount of land revenue to be assessed on any estate or to be paid in respect of any holding under this Act ;

(x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force;

(xi) any claim relating to the allowance to be received by a land-owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceedings taken in consequence of the refusal of any persons to be liable for an assessment under this Act;

(xii) the formation of an estate out of waste land ;

(xiii) any claim to hold free of revenue any land, mills, fisheries or natural products of land or water ;

(xiv) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-

revenue or any sum recoverable as an arrear of land- revenue;

(xvi) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought ; (xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land -revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy ;

[(xviii-a) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101-C and 101-D, respectively, of Chapter VIII];

(xix) any claim to set aside or disturb a division or appraisal of produce confirmed or verified by a Revenue-officer under this Act ;

(xx) any question relating to the preparation of a list of village cesses or the imposition by the 2[State] Government of conditions on the collection of such cesses ;

(xxi) any proceeding under this Act for the communication of the dues of a superior land-owner ; (xxii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land-revenue; or (xxiii) any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or re-assessing such revenue, or arising out of the liability of an assignee to pay out of assigned land-revenue, or of a person who would be liable for land-revenue if it had not been released, compounded for or redeemed to pay on the land-revenue for which he would but for such release, composition or redemption be liable, such a percentage for the remuneration of a 3[] village officer as may be prescribed by rules for the time being in force under this Act."

(emphasis added)

11. It was asserted that the Civil Court's jurisdiction was excluded, particularly for any claim of partition of an estate or any question connected with or arising out of proceedings of partition, except a question related to title in any property of which partition is sought, as per Section 158(2)(xvii). To buttress the theme of this exception, relevant rules of the Delhi Land Reforms Act, 1954 ('DLR Act') have also been adverted to, in particular, Section 185 read with Schedule I, and Section 186. For ease of reference, the said sections are extracted as under:

"185. Cognizance of suits, etc, under this Act.

(1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil

Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.

.....

SCHEDULE I					
Section 185					
S. No	Section of the Act	Description of suit application and other proceedings	Period of which Limitation	Time from	Proper Court
				the period begins	Fees
.....					
7	36(2)	Application for determination of the share of the lessor and partition of holding.	Do.	Do.	Do.

186. Procedure when question of title is raised. (1) Notwithstanding anything contained in section 185, if in any suit or proceeding mentioned in column 3 of Scheduled I, question is raised regarding the title of any party to the land which is the subject matter of the suit or proceeding and such question is directly and substantially in issue the Court shall, unless the question has already been decided by a competent civil court for the decision of that issue only.

Explanation:- A plea regarding the title to the land which is clearly untenable and intended solely to oust the jurisdiction of the revenue court shall not be deemed to raise a question regarding the title to the land within the meaning of this section.

(2) The civil court, after reframing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit or, accepting the finding of the civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court in a suit or proceeding in which an issue regarding title has been decided by a civil court under sub-section (2) shall lie to the civil court which having regard to the valuation of the suit has jurisdiction to hear appeal from the Court to which the issue of title has been referred."

(emphasis added)

12. Applicant/defendant no.2 relied upon the decision in *Seeta Devi v. Radha-Welfare Association* 2016 SCC OnLine Del 2014, wherein the Court held that the Revenue Assistant has exclusive jurisdiction under the DLR Act to adjudicate matters related to the partition of agricultural land, bhumidar rights, possession, and ejection of unauthorized occupants. Section 185 of DLR Act oust the jurisdiction of Civil Courts, and Section 186 provides the procedure when a question of title arises. Applicant/ defendant no.2 relies on the said judgment and asserts that the matter should fall under the purview of Revenue Assistant. Relevant paragraphs are extracted as under:

"27. Entry No. 7 of Schedule 1 of the DLR Act, 1954 makes the Court of Revenue Assistant as the Court of original jurisdiction to adjudicate on an application for determination of the share of the lessor and partition of holding. It also stipulated that an appeal from such order would lie before the Deputy Commissioner. Under Entry 3 of the Schedule, application to regain possession would lie before the same Revenue Assistant and under Entry 19 a suit for ejection of a person occupying land without title or damages would also lie before the Revenue Assistant. The respondents, having been aggrieved by the partition order passed by the Revenue Assistant, ought to have impugned the order as per the provisions of the DLR Act before the Deputy Commissioner. The partition order cannot be the subject matter of adjudication by a Civil Court because jurisdiction has been specifically and exclusively conferred upon the Revenue Court regarding matters of bhumidari rights and possession of agricultural lands. The jurisdiction of other courts has been clearly ousted under Section 185(1) of the Act. Furthermore, section 186 of the Act provides the procedure to be followed when a question of title is raised.....

28. The dicta in *Hatti v. Sunder Singh* (supra) clearly lays down that the issue of declaration of bhumidari rights, as per S. 186 of the Delhi Land Reforms Act, can only be taken up by the Revenue Court. In view of the aforesaid discussion, it is clear that exclusive jurisdiction regarding i) partition of agricultural property, ii) application for declaration of bhumidari rights, iii) application for regaining of possession and for iv) ejection of a person occupying the land without title, would only lie before the Court of Revenue Assistant. Therefore, when the statute itself clearly stipulates jurisdiction

of another court, a Civil Court cannot assume the jurisdiction even if an order has been procured by alleged misrepresentation before or suppression of material facts from and/or by fraud played upon the Court of Revenue Assistant. Indeed jurisdiction of other courts has been specifically ousted by s.185 of the Act.

29. Therefore, insofar as the Civil Court lacked jurisdiction to set aside the order dated 08.03.1983 passed by the Court of Revenue Assistant, the impugned order and decree is without jurisdiction and is liable to be set aside. Accordingly, the impugned judgment and decree dated 2.2.2011 Civil Suit no. 1/2010 is set aside. It would be open for the respondents to pursue remedies as may be available to them in law under the Delhi Land Reforms Act, 1954. The aforesaid petitions are allowed and disposed off in the above terms. No orders as to costs."

(emphasis added)

13. It is contended by counsel for applicant/defendant no.2 that the stay order dated 23rd October 2018, was passed by this Court oblivious of these facts since the plaintiff had not brought them to attention.

Submissions by the counsel for plaintiff

14. It was submitted that for determination of application under Order VII Rule 11, only plaint would have to be examined, and not the written statement or the documents filed by the defendant.

15. In any event, defendant's reliance on affidavits of family friends/associate stating that the Will has been read out to all the family members are only assertions, have to be ultimately proved during trial, and cannot be considered determinative, at this stage. Validity of the Will, even if registered, would have to be proved by defendant during the trial, and cannot be considered determinative.

16. Probate petitions concerning the Will were filed by defendant no.2 before this Court and were still pending adjudication.

17. Paragraph nos.1 to 13 of the application under Order VII Rule 11 of CPC raised all factual issues, which would have to be proved during trial. The applicant/defendant no.2 cannot seek to advert to averments in the written statement to canvas his case for rejection of plaint.

18. It was settled law that under Order VII Rule 11 of CPC, the plaint could not be rejected in part. For this, counsel for plaintiff focused on the averment made in paragraph 14 of the application, where it was stated that no relief could be claimed, in that respect and the suit is barred and not maintainable. For ease of reference, the said paragraph is extracted as under:

"14. That further without prejudice, it is submitted that the plaintiff has sought the partition in respect of land situated at Village Tangon, Tehsil Mohali, District Ropar, Punjab, which is an agricultural land. No relief in respect thereof can be claimed and

the present suit. The suit is thus barred and is not maintainable in respect of the said property."

(emphasis added)

19. Therefore, it was contended that applicant/defendant no.2 himself was seeking non-maintainability of the suit in respect of 'Ropar property'. To buttress this, plaintiff's counsel relied upon the decision of the Supreme Court in *Sejal Glass Ltd. v. Naveen & Merchants* 2017 INSC 783, particularly paragraphs nos. 5 & 10, wherein the Supreme Court held that the provision of Order VII Rule 11 apply to the plaint as a whole, not in part. A plaint can only be rejected if the entire suit is unsustainable. The same was reiterated in *Madhav Prasad Aggarwal v. Axis Bank* 2019 (7) SCC 158. Relevant paragraph of the judgment is extracted as under:

"10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256]* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertent to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial."

(emphasis added)

20. It was contended that there would be no prohibition under the PLR Act in relation to seeking partition, as it pertained to partition and not regarding title. The question here involved the title of the property, and therefore, the matter could only be referred to the Collector after declaration of the rights. For this, reliance was placed on *Abdul Razak Lashkar v. Mafizur Rahman & Ors.* 2024 INSC 1023, where the Supreme Court adverted to Section 54 of CPC read with Order XXII Rule 18

and noted as under:

"35. Section 54 of the CPC reads thus:

"Section 54. Partition of estate or separation of share.-

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

.....

37. Order XX Rule 18 of the CPC reads thus:

"18. Decree in suit for partition of property or separate possession of a share therein.- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54; (2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required."

38. The aforesaid rule allows the court to determine the rights of parties with respect to land in the civil court and to pass a preliminary decree, decree in the rights of several parties interested in the property. When actual partition is to be effected, in pursuance of the declaration of the rights of the parties in land, the civil court has to refer the matter to the Collector or any officer subordinate to him authorized to act on behalf of the Collector."

(emphasis added)

21. It would be absurd if the very ownership of the land in Ropar was decided in the suit whereas the parties would thereafter seek partition before the Collector, thereby introducing multiplicity of proceedings. In any event, as per counsel for plaintiff, the Collector had no power to lead evidence. The Revenue Officer was only for the administrative process to divide, not decide the question of

title.

Submissions in Rejoinder

22. In rejoinder, counsel for defendant asserted that the plaint could be rejected even partly, in relation to agricultural properties, as was evident from the decision of this Court in *Shri Krishan v. Shri Ram Kishan* 2009 (110) DRJ 323, where it was held as under:

"13. Order 7 Rule 11 of the Civil Procedure Code contemplates that where the suit appears from the averments made in the plaint to be barred by any law, then the plaint can be rejected. The legal position is that to decide whether a plaint is liable to be rejected under Order 7 Rule 11, averments in the plaint have to be read without looking at the defense and thereupon it has to be seen whether on the averments made in the plaint Under Order 7 Rule 11 of the Code of Civil Procedure gets attracted. For rejection of the plaint under Order 7 Rule 11 the averments in the plaint should be unequivocal, categorical and specific leading to only conclusion that the plaint is barred. From the plaint and the documents filed by the plaintiff it is apparent that the suit pertains to agricultural land and therefore, the relief of declaration and partition of such land covered under The Land Reforms Act shall be barred under section 185 of the said Act and therefore, the plaint is liable to be rejected.

.....

20. Therefore, in the present facts and circumstances, the suit of the plaintiff is liable to be rejected under O VII Rule 11 (d) of the Code of Civil Procedure so far as the Agricultural properties are concerned which are detailed in Annexure A & B of the plaint except the House at item No. 6 in Annexure A and the moveable properties also detailed in Annexure A. The suit shall, however, continue in respect of house shown in Annexure A at item No. 6 and the moveable properties also shown in Annexure A to the plaint."

(emphasis added)

23. He also relied on the decision of the Supreme Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* (2020) 7 SCC 366, where the Court noted that it is the duty of the Court to examine the statements in the plaint, along with supporting documents, to determine whether a valid cause of action is established. Relevant paragraphs are extracted as under:

"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."

(emphasis added)

24. Further, he relied on Dahiben (supra) for the scope of cause of action, stating that the plaintiff ought to have revealed all material facts known to them at that stage, and, therefore, concealment would disentitle them from relief. In this regard, paragraph 24 of Dahiben was quoted, which is extracted as under:

"24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit."

Analysis

25. It is undeniable that the assessment of Order VII Rule 11 is to be essentially determined on the basis of the averments made in the plaint, which have to be read holistically, as a whole, and not in an isolated or a truncated manner. This has been categorically articulated by the Supreme Court in Dahiben (supra), crystallized in paragraph 23.1-23.15 of the said judgment. For ease of reference, said paragraphs are extracted as under:

"23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.

23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

"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 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;
- (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-papers 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-papers, 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."

(emphasis supplied) 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.

23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

"14. Production of document on which plaintiff sues or relies.--(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(emphasis supplied) 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.

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."

(emphasis added)

26. As observed by the Supreme Court in paragraph 23.10 of Dahiben (supra) (extracted above), pleas taken by defendant in the written statement in an application for rejection of plaint would be irrelevant and cannot be adverted to or taken into consideration. The averments made in the plaint are to be taken in their entirety, in conjunction with the documents relied upon therein, and it is not permissible to cull out a sentence or a passage in isolation.

27. A perusal of the plaint would bear out that the relief sought is for partition of the three immovable properties by metes and bounds to the extent of equal undivided shares between plaintiff (Shri Harinder Kaur/Mother who is now deceased and represented by Shri Maninder Pal/defendant no.1 duly transposed as plaintiff) and the two defendants. Partition is also sought with respect to certain movable properties which were owned by late Shri Kulwant Singh (father of the parties). Out of the three immovable properties, two are situated within the jurisdiction of this Court, specifically in 'Vishal Enclave, New Delhi' and 'Anand Parbat Industrial Area, New Delhi', while the third property is situated in Punjab, in District Ropar.

28. The fulcrum of the dispute and the basis for Order VII Rule 11 application is the lack of inherent jurisdiction of this Court in entertaining the suit for partition concerning the Punjab property.

29. The plaint essentially states that late Shri Kulwant Singh died intestate, and plaintiff, along with his brothers, is entitled to equal shares in the properties. The issue, therefore, is whether the said plaint needs to be rejected solely due to the jurisdictional issue relating to the Punjab property.

30. The arguments advanced by defendants revolves around the principle enunciated in DLR Act, in particularly Section 185 & 186, read with Schedule- I. Section 185 excludes the jurisdiction of any Court from taking cognizance of any suit, application, or proceeding mentioned in Column 3 of Schedule-I (extracted in paragraph 11 above). The relevant entry in Schedule-I pertains to an application for the determination of party's share in the partition of a holding, for which the competent Court is the Revenue Assistant, and then First Appellate Court being the Deputy Commissioner.

31. However, if Section 185 is read in isolation, then the issue of partition of a property would be subject to the non obstante provision of Section 185, and this Court may not have jurisdiction to determine the matter. However, plaintiff has invoked the scope of Section 186, which provides that if a question is raised regarding title of any party to the land, which is the subject matter of suit or proceeding, the Revenue Courts shall frame an issue on the question of title and submit a report to the competent Civil Court for decision.

32. The Civil Court, after reframing the issue, if necessary, shall decide such an issue and return the record together with its finding to the Revenue Courts.

33. Since the land is in Punjab, the applicability of the PLR Act is apposite and more critical. Section 158 of PLR Act excludes the jurisdiction of Civil Courts, particularly in matters relating to partition [Section 158(1)(xviii)], (extracted in paragraph 7 above), with the said question to be determined solely by the Revenue Officer. No provision has been pointed out that is similar to Section 186 of

DLR Act, which is why reference was made to Section 185 & 186 of DLR Act.

34. Ex-facie, a simpliciter issue of partition regarding to a Punjab property would have to be decided by the Revenue Courts, as per Section 158 of PLR Act. However, this aspect is sidelined considering that the question of title itself has been raised by the defendants, who have propounded a registered Will dated 31st March 2015, by which Late Shri Kulwant Singh allegedly bequeathed his properties in favour of the parties named therein.

35. The Will, in case, proved by defendant would, therefore, bring it outside the purview of a simpliciter partition. The issue would be of title, that stage has not yet arrived. As and when the issues are framed, the aspect of the Will being propounded by defendant no.2 will naturally be in question and will have to be proved by defendant no.2. It would, therefore, not be appropriate at this stage to consider the rejection of the plaint with respect to the property in District Ropar, Punjab. Moreover, since a probate petition has been filed by applicant/defendant no.2 and is pending before this Court, the determination of title will take primacy.

36. Moreover, even assuming that the Will has not been propounded and it is merely a case of partition with no dispute regarding title, an issue arises as to whether the plaint can be rejected partly with respect to the Punjab property. The decision of this Court in Shri Krishan v. Shri Ram Kishan (supra), relied upon by defendants, may not strictly come to their aid, particularly in light of the Supreme Court decision in Central Bank of India & Anr. v. Smt. Prabha Jain & Anr. 2025 INSC 95.

37. The Supreme Court, while considering an issue of Order VII Rule 11, where one of the reliefs being barred by law, held that even if one relief survives, the plaint cannot be rejected under Order VII Rule 11 of CPC. In that case, the third relief prayed for was considered barred by Section 17(3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), but the other relief was not, and were within the jurisdiction of Civil Courts. The Supreme Court held that the plaint cannot be rejected under Order VII Rule 11 of CPC. The Court further held that if the Civil Court finds that a particular relief is barred by law, it must leave that issue undecided and cannot reject the plaint partially and make an adverse observation in respect of that relief. Relevant paragraph of the said decision is extracted as under:

"25. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B."

(emphasis added)

38. This Court is not inclined to reject the plaint partially as sought by defendants, both on the ground that the issue of title is bound to arise considering the Will has been propounded, as also in

light of the Supreme Court's decision in *Central Bank of India & Anr. v. Smt. Prabha Jain & Anr* (supra).

39. In this regard, reference by plaintiff's counsel to *Sejal Glass Ltd. v. Naveen & Merchants* (supra) and *Madhav Prasad Aggarwal v. Axis Bank* (supra) is also relevant (extracted in paragraph 16 above). Though the issue in these decisions pertained to whether a particular portion of the plaint could be rejected against some defendants while continuing against others, the fundamental principle that the plaint can either be rejected as a whole or not at all, has been categorically stated.

40. The same is also in consonance with the practical issues that would arise, with parties claiming to partition but a dispute regarding title lingers (with the Will being propounded); the determination of shares in principles will apply to all the properties in question. After such determination, if any aspect of division by metes and bounds remains, that aspect could potentially be taken care of by the Revenue Courts in Punjab. This is the process contemplated in Order XX Rule 18 as well and reinforced by the decision in *Abdul Razak Lashkar v. Mafizur Rahman & Ors* (supra) (extracted in paragraph 20 above).

41. If, however, the defendant succeeds in proving the registered Will as valid, the title of the properties will itself be in question, and the partition claim may not survive.

42. Either which way, Order VII Rule 11 application, as canvassed by defendants, cannot be entertained.

43. Accordingly, the application is dismissed.

44. The suit will proceed further.

CS(OS) 540/2018

1. List before the Joint Registrar (Judicial) on 6th May 2025, for further proceedings.

2. Judgment be uploaded on the website of this Court.

(ANISH DAYAL) JUDGE APRIL 4, 2025/ak/tk/bp