

(2025) 12 DEL CK 1870
In the Delhi High Court
Case No : FAO(OS) No. 145 Of 2025

Vibhuti Jauhari & Anr.

APPELLANT

Vs

Anita Munjal And Ors & Anr. & Anr.

RESPONDENT

Date of Decision : 24-12-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 4, Order 7 Rule 11, Order 7 Rule 11(a),
Order 7 Rule 11(d), Order 7 Rule 14, Order 7 Rule 14(1)
Limitation Act, 1963 — Article 113

Citation : (2025) 12 DEL CK 1870

Hon'ble Judges : Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench : Division Bench

Advocate : Krishnan Venugopal, Prity Sharma, Shikhar Shant, Ashwani Kaushik,
Umang Motiyani, Samrat Nigam, Ajay Dabas, Anand Dabas, Priyanka Dagar,
Arpita Rawat, Ravi Dagar, Rishikesh

Final Decision : Dismissed

Judgement

Anil Kshetarpal, J

1. Through the present Appeal, Appellants/Defendant Nos.1 and 2 assail the correctness of the Judgment dated 10.09.2025 [hereinafter referred to as 'Impugned Judgment'], whereby the learned Single Judge dismissed the Application filed by the Appellants under Order VII Rule 11 of the Code of Civil Procedure, 1908, [hereinafter referred to as 'CPC'].

2. Herein, the parties shall be referred to by their status and ranking in the suit, i.e., CS(OS) No. 4/2020.

FACTUAL MATRIX:

3. In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.

4. The genealogical chart of the family is extracted as under:

5. The present suit concerns disputes with respect to the following suit properties, namely: (i) Flat No. 115-D, Bathlas Co-operative Group Housing Society Ltd., Plot No.43, I. P. Extension, Patparganj, Delhi, in respect whereof payments were made during the period 1984-1992 [hereinafter referred to as 'Bathla Property']; and (ii) Plot No.91, Maulsari Road, DLF Qutab Complex, Phase-III, Gurugram, Haryana, admeasuring 490 sq. metres, in respect whereof payments were made during the period 1990-1992 [hereinafter referred to as 'Gurugram Property'].

6. It is the case of the Plaintiff that the suit properties were acquired from joint family funds, including the proceeds derived from the sale of properties left behind by the late Sh. D. D. Jauhari [hereinafter referred to as 'deceased father'], and were intended for the benefit and welfare of the family as a whole. However, while the Gurugram Property was purchased in the joint names of the late Smt. Kaushalya [hereinafter referred to as 'deceased mother'] and the late Sh. Vinay Jauhari [hereinafter referred to as 'Vinay'], the share certificate and allotment letter in respect of the Bathla Property stood issued exclusively in the name of Vinay.

7. The Plaintiff avers that at the time of booking of the Bathla Property, Vinay was merely 21 years of age and was pursuing his education, having no independent or discernible source of income. It is further averred that the said property was, in fact, utilized by the deceased mother for residential purposes.

8. The Plaintiff further claims that upon the death of Vinay on 21.02.2018, the parties entered into discussions concerning the partition of the suit properties. However, Defendant Nos.1 and 2 thereafter instituted a civil suit seeking a declaration of their title in respect of the Gurugram Property, asserting that Vinay was its absolute owner. It is averred that in the said suit, Defendant Nos.1 and 2 relied upon and produced a Gift Deed dated 16.08.2005, purportedly executed by the deceased mother in respect of her share in the Gurugram Property in favour of Vinay. The Plaintiff asserts that no reference to the said Gift Deed was ever made by its alleged executant during her lifetime and that the Plaintiff became aware of the existence of the said Gift Deed only during the course of the aforesaid civil proceedings.

9. On the other hand, it is the case of Defendant Nos.1 and 2 that the present suit proceeds on a wholly misconceived premise that the suit properties were purchased out of the alleged "joint family funds" of the deceased father, who, according to the Plaintiff, is stated to have died intestate. Defendant Nos.1 and 2 contend that the very foundation of the Plaintiff's case is erroneous and contrary to the admitted and contemporaneous documentary record.

10. It is further their case that the entire edifice of the Plaintiff's claim collapses at the threshold, being in the teeth of registered testamentary instruments, undisputed title documents, and binding judicial pronouncements already rendered inter se the same parties and in respect of the same properties. The

deceased father is stated to have executed a valid and subsisting Will dated 06.04.1976, whereby his estate was bequeathed to his only son, Vinay, after conferring a life interest upon his wife. The said Will was duly acted upon by the family, and all the daughters, including the Plaintiff, executed a No Objection Certificate dated 18.07.1978, expressly acknowledging the said testament.

11. It is further asserted that thereafter, the deceased mother executed a registered Will dated 29.08.1985, bequeathing her properties in favour of her son, Vinay. Consequently, title to both the Bathla Property and the Gurugram Property stood conclusively vested in Vinay, as reflected, inter alia, in the registered Sale Deed dated 08.01.1998 and the registered Gift Deed dated 16.08.2005.

12. Defendant Nos.1 and 2 contend that the documentary record, spanning over four decades, unequivocally establishes the sole and exclusive ownership of Vinay. It is pointed out by the Defendant Nos.1 and 2 that the mutation of the Bathla Property was confirmed in their favour by the Delhi Development Authority vide letter dated 29.05.2019, followed by the execution of the Conveyance Deed dated 30.05.2019. Similarly, the title and mutation in respect of the Gurugram Property stand adjudicated and recorded in their favour pursuant to the judgment dated 01.05.2023 passed by the learned Civil Judge, Gurugram, in CS(OS) No. 5049/2018, declaring them to be the only legal heirs and owners in possession of the said property.

13. It is in the aforesaid backdrop that Defendant Nos.1 and 2 approached the learned Single Judge by invoking the jurisdiction of this Court under Order VII Rule 11 of the CPC, seeking rejection of the plaint on the grounds that the:

- i. Plaint does not disclose any cause of action;
- ii. Suit is barred by limitation;
- iii. Plaint is vexatious and illusory; and,
- iv. Plaintiff has not approached the Court with clean hands.

14. The learned Single Judge, however, vide the Impugned Judgment, dismissed the said application, holding that the plaint discloses a cause of action and that the issue of limitation would require adjudication at trial.

15. Aggrieved by the Impugned Judgment, Defendant Nos.1 and 2 have preferred the present Appeal.

CONTENTIONS OF THE PARTIES:

16. Heard learned senior counsel for the parties at length and, with their able assistance, perused the paper book.

17. Learned senior counsel for the Appellants/Defendant Nos.1 and 2, while relying upon the judgment rendered in *Dahiben v. Arvindbhai Kalyanji Bhanusali* (2020) 7 SCC 366, has made the following submissions:

i. That the plaint, even when read along with the documents relied upon, does not disclose any cause of action warranting trial.

ii. That the Impugned Judgment proceeds on impermissible presumptions by speculating that the Plaintiff may succeed if her averments are proved, whereas, under Order VII Rule 11 of the CPC, the Court is required to confine itself strictly to the pleadings and documents on record.

iii. That binding judicial determinations inter se the same parties, holding that there is no material to support the plea of acquisition of the suit properties from joint family funds, have been overlooked, despite having attained finality up to the Supreme Court.

iv. That the plaint itself reveals that the suit is ex facie barred by limitation, the challenge being directed against registered documents executed decades earlier, thereby attracting rejection under Order VII Rule 11(d) of the CPC. The Plaintiff's plea of having acquired knowledge of the said documents only during succession proceedings in the year 2018 is demonstrably untenable, particularly as the said proceedings related to the Gurugram Property and not to the Bathla Property

v. Reliance is placed on Sagar Gambhir v. Sukhdev Singh Gambhir 2017 SCC OnLine Del 7305; and Sunny Minor v. Raj Singh 2015 SCC OnLine Del 13446, to contend that in partition suits, particulars as to how the property is claimed to be part of the common hotchpotch are required to be pleaded as per Order VI Rule 4 of the CPC.

18. Per contra, learned senior counsel for Respondents supports the reasoning adopted in the Impugned Judgment and contends that, on a meaningful reading, the plaint discloses a sufficient cause of action warranting adjudication, and that the plea of limitation, as urged by Defendant Nos.1 and 2, involves disputed questions of fact which cannot be decided at the stage of Order VII Rule 11 of the CPC.

19. Learned senior counsel for the parties have not made any other submissions.

ANALYSIS AND FINDINGS:

20. Before proceeding further, it becomes important to take note of Order VII Rule 11 of the CPC, which enlists as many as six grounds to reject the plaint. The same is reproduced hereunder:

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

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to

supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

21. On a bare perusal of Clause (a) of the aforementioned provision, one of the grounds for rejection of the plaint is where it does not disclose a cause of action. While rejecting the plaint under Order VII Rule 11(a) of the CPC, the test to be applied is whether, on a meaningful reading of the plaint as a whole, the averments made therein, if taken to be true in entirety, disclose the existence of a right to sue. The Court, at this stage, is not required to examine the truth or otherwise of the allegations but only to see whether the plaint, on its face, discloses a cause of action warranting trial.

22. Further, Clause (d) of Order VII Rule 11 of the CPC mandates rejection of the plaint where, from the statements contained therein, the suit appears to be barred by any law. If, on a plain and meaningful reading of the plaint, the bar of limitation or any other statutory bar is evident on the face of the record, the Court is duty-bound to reject the plaint at the threshold, as continuation of such proceedings would amount to an abuse of the process of law.

23. The Supreme Court, in its judgment in *Dahiben (supra)*, has comprehensively delineated the scope and parameters of adjudication under Order VII Rule 11 of the CPC. The relevant extract of the said judgment, which authoritatively encapsulates the governing principles on rejection of plaint, is reproduced hereinbelow for ready reference:

"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.”

(Emphasis supplied)

24. Further reliance may also be placed upon a recent judgment rendered by the Supreme Court in *Vinod Infra Developers Ltd. v. Mahaveer Lunia & Ors.* 2025 SCC OnLine SC 1208, whereby the Court has held the following:

“8. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. Keeping in mind this settled principle of law, we proceed to examine whether the High Court was justified in rejecting the plaint under Order VII Rule 11 CPC.”

(Emphasis supplied)

25. Further reliance may also be placed upon another judgment of the Supreme Court in *Karam Singh v. Amarjit Singh & Ors.* 2025 SCC OnLine SC 2240, wherein the Court has held the following:

“15. Before we assess the correctness of the impugned orders, we must remind ourselves of the basic principles governing rejection of a plaint under Order 7 Rule 11 of CPC. Here, the defendants seek rejection of plaint under clause (d) of Rule 11 (i.e., suit barred by law). Clause (d) makes it clear that while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law. At this stage, the defense is not to be considered. Thus, whether the suit is barred by any law or not is to be determined on the basis of averments made in the plaint.”

(Emphasis supplied)

26. Adverting to the objection raised by the learned senior counsel appearing for the Appellants/Defendant Nos.1 and 2 that the plaint fails to disclose any cause of action, this Court finds it necessary to examine the said contention in the backdrop of the settled parameters governing consideration under Order VII Rule 11 of the CPC.

27. The suit before the Court is one seeking partition of the suit properties. At the stage of Order VII Rule 11 of the CPC, the Court is required to proceed on the assumption that the averments made in the plaint are correct and truthful in their entirety, without embarking upon an enquiry into their veracity. If, upon such an assumption, the pleadings disclose a right in favour of the Plaintiff to seek a share in the suit properties, the existence of a cause of action for maintaining the present suit stands duly established.

28. A careful and meaningful reading of the plaint reveals that the Plaintiff has clearly articulated the foundational facts constituting the cause of action. The plaint contains specific and unambiguous assertions that the suit properties were acquired out of joint family funds as well as from the proceeds generated through the sale of properties belonging to the deceased father. If these pleadings are accepted at face value and are ultimately substantiated in evidence, they would vest the Plaintiff with a clear, subsisting and legally enforceable right in the suit properties in the capacity of a co-sharer.

29. The plea that one of the suit properties was purchased prior to the sale of the deceased father's properties and, therefore, does not partake the character of joint family property, is evidently a defence set up by Defendant Nos.1 and 2. Such a contention raises disputed questions of fact, the adjudication of which necessarily requires an appreciation of evidence and cannot be undertaken at the threshold while considering an application for rejection of plaint.

30. Learned senior counsel for the Appellants/Defendant Nos.1 and 2 has placed reliance upon the decision of this Court in Sagar Gambhir (supra) to contend that, while considering an appeal arising from an order rejecting a plaint under Order VII Rule 11 of the CPC, it is incumbent upon the Plaintiff, in a suit for partition, to set out detailed particulars indicating the manner in which the properties are claimed to be joint family properties. In the said case, the plaint was found to be devoid of material particulars such as the date and mode of creation of the HUF, as also the chain of succession or inheritance forming the basis of the alleged coparcenary. Relying upon the earlier judgment of this Court in Sunny (Minor) (supra), the plaint was accordingly rejected under Order VII Rule 11 of the CPC for failure to disclose a cause of action.

31. However, in the facts of the present case, unlike the plaint in the aforesaid cases, the plaint herein is not lacking in material particulars. The Plaintiff has specifically pleaded the source of acquisition of the suit properties and asserted that they were purchased from joint family funds, including proceeds from the sale of the father's properties. The foundational facts necessary to sustain a suit

for partition are thus duly pleaded. The decisions in Sagar Gambhir (supra) and Sunny (Minor) (supra) are, therefore, clearly distinguishable.

32. Further, the judgments rendered by the Supreme Court in Commissioner of Wealth Tax, Kanpur & Ors. v. Chander Sen (1986) 3 SCC 567 and Yudhishter v. Ashok Kumar (1987) 1 SCC 204 are clearly distinguishable, as they do not pertain specifically to considerations arising at the stage of Order VII Rule 11 of the CPC and hence do not govern the present case.

33. In these circumstances, the plaint, judged solely on its averments, unmistakably discloses a cause of action for the present suit and does not warrant rejection on this ground. This Court, therefore, finds no infirmity in the view taken by the learned Single Judge in holding that the plaint discloses a sufficient cause of action.

34. Furthermore, the objection raised by the Defendant Nos.1 and 2 that the reliefs claimed in the present suit are barred by limitation does not commend acceptance at this stage. The submission that, since the title documents of the suit properties stand in the name of Vinay, the Plaintiff, by seeking partition, is in substance challenging the said documents, is misconceived. A plain reading of the plaint makes it evident that the Plaintiff does not assail the validity of the title deeds; she merely asserts her claimed share in the suit properties on the plea that the acquisitions were made from joint family funds. The relief sought, therefore, remains one for partition and not for setting aside the title documents.

35. The limitation for a suit seeking partition is not specifically provided under any Article in the Schedule to the Limitation Act, 1963. Consequently, the claim is governed by the residuary provision, namely Article 113, which prescribes a period of three years from the date when the right to sue accrues. It is settled law that the cause of action in a suit for partition is of a recurring nature and continues so long as the joint status subsists, crystallising only upon refusal of a demand for partition.

36. The plaint specifically avers that discussions for partition were initiated only in the year 2018 and that the Plaintiff's demand for partition was refused thereafter. At this stage, where the averments in the plaint are required to be taken as correct, the suit cannot be held to be barred by limitation on the relief of partition.

37. Further, the plaint contains clear pleadings that the Plaintiff became aware of the said Gift Deed dated 16.08.2005 only upon inspection of the records in proceedings instituted by the Defendant Nos.1 and 2 in the year 2018. Hence, the question of limitation becomes mixed question of law and facts, which can be adjudicated after the parties have led their evidence.

38. In view of the foregoing discussion on both the objections raised, namely, the alleged absence of a cause of action and the plea of bar of limitation, this Court finds that neither ground is made out for rejection of the plaint under Order VII

Rule 11 of the CPC. The plaint, on a meaningful reading, discloses a clear cause of action for institution of the suit, and the reliefs claimed therein cannot be held to be barred by limitation at this stage. The learned Single Judge has, therefore, rightly rejected the application seeking rejection of the plaint.

CONCLUSION:

39. Accordingly, the present Appeal is found to be devoid of merit and is dismissed.