



2025:DHC:1399



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

% *Reserved on: 24th January 2025.*

Pronounced on: 03rd March 2025.

+ **CS(OS) 441/2023, I.A. 13786/2023, I.A. 29995/2024, I.A. 32144/2024
&I.A. 1216/2025**

SH. SUBHASH CHANDRA JARODIAPlaintiff

Through: Mr. Vikramjeet Singh Ranga, Adv.
along with Plaintiff in-person.

versus

SH. VIJAYINDER KUMAR & ORS.Defendants

Through: Mr. Ashutosh Nagar, Mr. Ishan
Harlalka and Mr. Kunal Taneja, Advs.
for D-1.

Mr. Himanshu Sachdeva and Mr.
Ashish Kumar Yadav, Advocates for D-
4.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 29995/2024 (Application under Order VII Rule 11 CPC)

1. This application has been filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') by defendant no.1 for rejection of the plaint.



2. The suit was filed by plaintiff for a declaration of the registered gift deed dated 06th September 2021, executed by *Late Sh. Chander Bhan* in favour of defendant no.1 in respect of the *property bearing No. M-111, Saket, New Delhi-110017* (*'suit property'*), as 'null & void', as well as declaring the registered Will dated 26th July 2017, executed by *Late Sh. Chander Bhan* in favour of defendant no.1 as 'null & void'. Additionally, plaintiff seeks a permanent injunction restraining defendant no.1 from creating third-party rights over the said property. *Late Sh. Chander Bhan* passed away on 05th February 2023, at the *age of 92*, leaving behind Class I legal heirs – eldest son (*plaintiff*), younger son (*defendant no.1*), and three daughters (*defendant nos.3-5*). By the present application, defendant no.1 seeks rejection of the suit on the grounds that there was no cause of action, the suit is undervalued, and the requisite Court Fees have not been deposited.

Submissions on behalf of Applicant/Defendant No.1

3. Defendant no.1 contends that his father, *Late Sh. Chander Bhan*, had purchased the property from his own savings, making it a self-acquired property. He bequeathed the same through a registered Will in favour of defendant no.1 and executed a gift deed in favour of defendant no.1.

4. A suit for partition with respect to the property has already been filed by defendant no.4 between the same parties. The property has been mutated in the name of defendant no.1, and both the property tax and electricity bills are issued in the name of defendant no.1. Defendant No.1 is in actual possession of the property and holds the keys to the said property as well.



5. Defendant no.1 alleges that there is no cause of action, considering that the suit has been filed in disregard of two registered documents. Plaintiff fails to provide any documentary evidence with regard to the cause of action.

6. Moreover, plaintiff has valued the property to be more than Rs 3,00,00,000/- (*Rupees Three Crores*). However, Section 8 of the Suit Valuation Act, 1887 stipulates that in suits other than those referred to in Sections 7(iv)(d), (vi), (ix) & (x) of the Court Fees Act 1870, the Court Fees is to be paid *ad valorem*. The *ad valorem* Court Fees has not been paid by plaintiff to date, who has merely paid an amount of Rs.413/- (*Rupees Four Hundred Thirteen only*) as total Court Fees. It is contended that by clever drafting, the plaintiff has surpassed the need to submit a legitimate cause of action and has failed to pay the *ad valorem* Court Fees, which is vital.

7. This Court, on 05th November 2024, delivered a judgment with respect to *I.A. 13786/2023 (Application under Order XXXIX Rule 1 and 2)* and *I.A. 32144/2024 (Application seeking vacation of the ad-interim order dated 28th July 2023)*. The Court appreciated the respective contentions of the parties and perused the documents as well. In *paragraph 13* of the said judgment, the Court noted as under:

“13. The plaintiff on 21st August 2024 fairly conceded before this Court that he is not in actual physical possession of any portion of the suit property”.

8. Accounting for the well-settled law regarding presumption of genuineness and validity attached to a registered document, the Court concluded in *paragraph 15.5* which is extracted as under:



“15.5. This Court is, therefore, of the considered view that there is no prima facie case of co-ownership of the suit property in favour of the plaintiff”.

9. The Court further noted in *paragraph 26* that plaintiff’s plea of constructive possession was without any merit, and the plaintiff is liable to pay *ad valorem* Court Fees. *Paragraph 26* of the said judgment is extracted as under:

“26. In view of the execution of the Gift Deed, the plaintiff’s plea of constructive possession is also without any merit. Upon execution of the Gift Deed dated 03.09.2021, late Shri Chander Bhan as per the recitals handed over the actual physical possession of the suit property to the defendant no. 1. The plaintiff is thus, liable to pay ad-valorem court fee.”

10. The issue of valuation was also considered by the Court. Since plaintiff was not in actual physical possession of the property, his plea of constructive possession was considered without any merit, and it was noted that plaintiff was thus liable to pay *ad valorem* Court Fees. The valuation of the suit property at *Rs 3,00,00,000/- (Rupees Three Crores)* was also considered without any basis, and the decision of this Court is recorded in *paragraph 27*.

11. However, since the plaintiff relied upon the decision in *Surhid Singh v. Randhir Singh & Ors* (2010) 12 SCC 112, to argue that he was a *non-executant* of the gift deed, seeking declaration of ‘null & void’ without a relief for possession, he was not required to pay the *ad valorem* Court Fees.

12. The Court, therefore, took a *prima facie* view that the relief simpliciter for declaration would not be maintainable in view of Section 34 of the Specific



Relief Act,1963 (*'SR Act'*). The matter had been then placed for further arguments.

Submissions on behalf of Plaintiff

13. Counsel for the plaintiff argued that the consequential relief could be sought at any stage. In support of this, reliance was placed on the decision of the Supreme Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd* (2022) 8 SCC 633, where the Court clarified the applicability of Section 34 of the SR Act and its proviso in the context of a declaratory suit.

14. Further reliance was placed on the Supreme Court's decision in *Akkamma v. Vemavathi* (2021) 18 SCC 371, wherein the Court examined whether a plaintiff could seek an amendment at the appellate stage to introduce a prayer for recovery of possession. Emphasizing the necessity of such an amendment being within the limitation period, the Court reiterated that a mere declaratory decree remains non-executable in most cases.

15. Plaintiff also submitted that there was no objection raised on the issue of consequential relief at an earlier stage, to which counsel for defendant stated that this issue came up during arguments before the Court on 05th November 2024.

16. Defendant in response, however, relied upon the decision in *Sunita Ranga v. Vijayinder Kumar & Ors* 2024:DHC:8516, which examined the necessity of making a full and fair disclosure in the plaint and the consequences of failing to challenge a registered Will in a suit seeking partition. Relevant paragraphs are extracted as under:



“13. In the plaint, a perusal of paragraph 8 of the plaint shows that the plaintiff was aware of the execution of the registered Will dated 24.07.2017 by late Sh. Chander Bhan in the year 2017 itself, however, the plaintiff failed to make a fair and full disclosure of the said document to this Court along with the plaint. The averments in paragraph 8 of the plaint in fact, indicate that the valid execution of the Will was to the knowledge of the plaintiff. The plaintiff, however, did not challenge the Will in the plaint filed on 21.02.2023. In view of the Will dated 24.07.2017 the assertion of the plaintiff in the suit at paragraph 4 that late Sh. Chander Bhan died intestate is incorrect to her knowledge. For this additional reason, the suit is without any cause of action. The relevant paragraph 8 of the plaint reads as under:

*“8. It will not be out of place to mention that Late Shri Chander Bhan has prior to the aforementioned oral family settlement **made a will**, the contents of which are not known to the Plaintiff at this stage, **however, later he revoked the said will** by stating that all his belongings and properties shall be equally divided among all the children.”*

(Emphasis supplied)

13.1 No documents evidencing the alleged revocation of the Will dated 24.07.2017 have been placed on record.

14. In the facts of this case, this Court is also satisfied that the plaintiff is neither in actual possession nor in constructive possession of the suit property. The suit property stood transferred and mutated in the favour of defendant no. 1 in the records of Municipal Corporation of Delhi ('MCD') on 06.09.2021.

14.1 Late Shri Chander Bhan died on 05.02.2023. The plaintiff has admittedly been estranged from late Shri Chander Bhan in the last few years of his life and thus the contention of the plaintiff that she is in actual



possession of the suit property is incorrect. The counsel for the plaintiff during the hearing on 21.08.2024 fairly conceded that the plaintiff is not in the actual physical possession of the suit property.

14.2 Since the title stood transferred in favour of defendant no. 1 in 2021, the assertion of the plaintiff that she is in constructive possession of the suit property is also incorrect.

.....

16. In view of the findings that the suit property was not part of the estate of late Sh. Chander Bhan at the time of his death, the plaint seeking partition on the premise that suit property forms a part of the estate is without any cause of action and is hereby rejected under Order VII Rule 11(a) CPC.”

(emphasis added)

17. Reliance is also placed on the decision in ***Dahiben v. Arvinbhai Kalyanji Bhanusali*** (2020) 7 SCC 366, where the Supreme Court elucidated the scope of Order VII Rule 11 CPC, emphasizing that a plaint must be rejected at the threshold if it does not disclose a cause of action or is otherwise barred by law. Relevant paragraphs are extracted as under:

“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.”

23.6. 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.

23.8. 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.



23.13. 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)

18. The plaintiff, however, rejoined by stating that they had paid *ad valorem* Court Fees on the basis of the 1/5th share in the said property.

19. However, counsel for defendant pressed for rejection of the suit on the ground of lack of cause of action. It was also stated that an earlier suit for partition had been filed by the defendant no.4 (*sister*), and that only when issues were raised in the written statement, the instant suit by the *brother* was filed.



The same issue, therefore, having been raised, a second suit cannot be considered.

Analysis

20. The issue concerns the suit property, which was self-acquired by *Late Shri Chander Bhan*, who passed away on 5th February 2023 at the age of 92, leaving behind Class I legal heirs – eldest son (*plaintiff*), younger son (*defendant no.1*), and three daughters (*defendant nos.3-5*).

21. Defendant no.4, *Sunita Ranga*, one of the daughters of *Late Shri Chander Bhan*, filed a Civil Suit **CS(OS)148/2023** seeking partition with respect to the suit property. Defendant no.4 as one of the *Class-I* legal heirs, claimed $1/5^{\text{th}}$ share in the suit property. Defendant no.1 (*the younger son*) was also arrayed as defendant no.1 in the said suit and asserted a registered Will dated 24th July 2017, executed by the deceased father, bequeathing the suit property in favour of defendant no.1 exclusively.

22. The Court, by judgment dated 5th November 2024 (***Sunita Ranga V. Vijender Kumar*** 2024:DHC:8516) rejected the suit of *Sunita Ranga* (*defendant no.4 herein*) as being ‘*without cause of action*’, considering that she had not made a fair and full disclosure of the existence of the registered Will. The Court also recorded its satisfaction that *Sunita Ranga* (*defendant no.4 herein*) was not in actual possession nor in constructive possession of the suit property.

23. However, in *paragraph 19* of the said judgment, the rights and contentions of defendant no.2 (*plaintiff herein*) to challenge the gift deed and registered Will were expressly left open to be adjudicated in the present suit.



24. While hearing **I.A.13786/2023** filed under Order XXXIX Rule 1 & 2 of CPC, this Court on 5th November 2024 noted in *paragraph 25* that the plaintiff was not in actual physical possession of the suit property, as the actual possession being with defendant no.1. The Court further noted that the plaintiff had conceded to the said fact on 21st August 2024. Consequently, the Court held that the plaintiff was liable to pay *ad valorem* Court Fees. For ease of reference, the said paragraphs read as under:

“25. It is a matter of record that plaintiff is not in actual physical possession of the suit property. The actual physical possession is with the defendant no. 1 and the plaintiff has fairly conceded to the said fact on 21.08.2024.

26. In view of the execution of the Gift Deed, the plaintiff’s plea of constructive possession is also without any merit. Upon execution of the Gift Deed dated 03.09.2021, late Shri Chander Bhan as per the recitals handed over the actual physical possession of the suit property to the defendant no. 1. The plaintiff is thus, liable to pay ad-valorem court fee.”

25. Relying on ***Surhid Singh*** (*supra*), the Court noted that the since no consequential relief for possession had been sought, the question was left open as to whether it would be maintainable or not. For ease of reference, the said paragraphs read as under:

*“28. In these facts, the reliance placed by the plaintiff on the judgment of *Suhrid Singh* (*supra*) is apposite. The Supreme Court in the said judgment clarified that a non-executant plaintiff, who prays for declaration qua a sale*



deed and seeks the consequential relief of possession has to pay ad-valorem Court fee as provided under Section 7 (iv) (c) of the Court fee Act, 1870.

29. In the facts of this case the plaintiff has not prayed for the essential consequential relief for declaration of co-ownership and possession. In the considered opinion of this Court, without seeking the said consequential reliefs the present suit for declaration would not be maintainable in view of Section 34 of Specific Relief Act, 1963 and is liable to be dismissed under Order VII Rule 11 (d) of CPC.

(emphasis added)

26. The plaintiff has now stated that an application under *Order VI Rule 17* of CPC, being ***I.A.1216/2025***, has been filed seeking to add the consequential relief and that the *ad valorem* Court Fees for the *1/5th share* has been duly paid. Relying on the decision of the Supreme Court in ***Frost International*** (*supra*) and ***Akkamma*** (*supra*), the plaintiff states that he can seek consequential relief at any stage. Relevant paragraphs of ***Frost International*** (*supra*) are extracted as under:

“41. The other contention of Defendant 1 is that from the pleadings and averments in the plaint and the prayers sought therein, it appears that only certain declaratory reliefs have been sought and further, consequential reliefs have been omitted to be prayed. Hence, the suit is barred under the provisions of the SR Act and is liable to be dismissed and the plaint is liable to be rejected under Order 7 Rule 11CPC.

.....

43. Thus, the main thrust of the application seeking rejection of the plaint is that apart from the fact that the plaint does not disclose a cause of action which has been



negated by the Revisional Court and rightly so, the plaintiff has sought only declaratory reliefs and has not sought further or consequential reliefs. In the circumstances, the suit is barred under the provisions of the SR Act.

44. Section 34 of the SR Act reads as under:

“34. Discretion of court as to declaration of status or right. — Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

45. The proviso to Section 34 states that no court can make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. The said question will have to be considered at the time of final adjudication of the suit as the question of granting further relief or consequential relief would arise only if the court grants a declaration. If the plaintiff is unsuccessful in seeking the main relief of declaration, then, the question of granting any further relief would not arise at all. Therefore, omission on the part of the plaintiff in praying for further consequential relief, would become relevant only at the time of final adjudication of the suit. Hence, in view of the above, the



plaint cannot be rejected at this stage by holding that the plaintiff has only sought declaratory reliefs and no further consequential reliefs.”

(emphasis added)

27. While Section 34 of SRA imposes a bar, the decision in *Akkamma* (*supra*) clarifies that the amendment of the plaint cannot be denied as long as it is made within the prescribed limitation period. Relevant paragraph of *Akkamma* (*supra*) is extracted as under:

“20. In both the two reported decisions in *Devish* [*Devish v. M.K. Subbiah*, 1969 SCC OnLine Kar 103 : AIR 1970 Mys 249] and *Navalram Laxmidas Devmurari* [*Navalram Laxmidas Devmurari v. Vijayaben Jayvantbhai Chavda*, 1997 SCC OnLine Guj 83 : AIR 1998 Guj 17] referred to earlier, the first two courts — being the courts of fact had come to affirmative finding about the plaintiffs' possession of the suit property. So far as the proceeding before us is concerned, the finding of the first court is otherwise. The plaintiffs sought to introduce prayer for recovery of possession to cure the defect of not having made out a case on that count by way of amendment of plaint at the appellate stage. The High Court rejected this prayer. We have quoted earlier in this judgment the reason for such rejection. We are in agreement with the High Court on this point. While in a situation of this nature, amendment of plaint could be asked for (*Vinay Krishna v. Keshav Chandra* [*Vinay Krishna v. Keshav Chandra*, 1993 Supp (3) SCC 129]), such a plea ought to have been made within the prescribed limitation period. This position of law has been clarified in *Venkataraja v. VidyaneDoureradjaperumal* [*Venkataraja v. VidyaneDourer adjaperumal*, (2014) 14 SCC 502 : (2015) 1 SCC (Civ) 360] . In this case, it has been



held : (Venkataraja case [Venkataraja v. Vidyane Doureradjaperumal, (2014) 14 SCC 502 : (2015) 1 SCC (Civ) 360] , SCC p. 510, para 24)

“24. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earliest. (Vide Prakash Chand Khurana v. Harnam Singh [Prakash Chand Khurana v. Harnam Singh, (1973) 2 SCC 484] and State of M.P. v. Mangilal Sharma [State of M.P. v. Mangilal Sharma, (1998) 2 SCC 510 : 1998 SCC (L&S) 599] .”

(emphasis added)

28. To that extent, **I.A.1216/2025**, will have to be adjudicated, particularly on the issue of whether the consequential relief now being sought for possession of the property is barred by limitation. However, at this stage, the Court cannot preclude the plaintiff from moving such an application and having it considered in accordance with law.

29. As regards the payment of *ad valorem* Court Fees, based on the findings by the plaintiff, that they are not in physical possession, the matter has already been rectified by the plaintiff, and they have filed the requisite Court Fees, as per $1/5^{\text{th}}$ share that they claim.

30. In these circumstances, the Court is not inclined to reject the plaint under Order VII Rule 11 of CPC. Considering that sequence of events, in particular, *firstly*, the rejection of the partition suit by the daughter (*defendant no.4*); *secondly*, the reservation of the right to challenge the gift deed and registered



Will by the plaintiff in this suit; *thirdly*, the finding against plaintiff was not in physical possession and, therefore, are liable for the *ad valorem* Court Fees, by the judgment dated 5th November 2024. Therefore, this Court would lean in favour of the plaintiff for not rejecting the suit on this basis.

31. It is noted that the Court while disposing of applications *I.A.13786/2023* and *I.A.32144/2024*, under Order XXXIX Rule 1 & 2 and Order XXXIX Rule 4 of CPC, respectively, the Court has modified the interim order dated 28th July 2023 in the following terms:

“18. In the considered opinion of this Court, the defendant no. 1 has sufficiently made out a case for grant of this variation and accordingly defendant no. 1 is granted liberty to use or occupy and/or let out the suit property as per his discretion. However, defendant no. 1 is directed not to sell or mortgage the suit property without giving prior intimation to this Court. With this variation, no irreparable injury is being caused to the plaintiff on account of the aforesaid vacation of the interim order.”

(emphasis added)

32. In view of the above, the application stands dismissed.

CS(OS) 441/2023

1. List before the Joint Registrar (Judicial) on 03rd April 2025, for further proceedings.
2. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

MARCH 3, 2025/MK/tk