



2026:DHC:631



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

% **Judgment reserved on: 19 January 2026**
Judgment pronounced on: 28/01/2026

+ CS(OS) 216/2025, I.A. 8719/2025, I.A. 8720/2025, I.A. 8721/2025, I.A. 8722/2025, I.A. 26664/2025 & I.A. 29804/2025

KANAK TRAKRU & ANR.Plaintiffs
Through: Mr. Ashok Gurnani & Mr.
Mukesh Kr. Gupta Advs.
versus

RENU TRAKRU SINGLA & ORS.Defendants
Through: Mr. Arvind Kumar Gupta, Mr.
Abhiesumat Gupta, Mr. Ashish
Singh & Mr. Ishan Parashar,
Advs. for D-1.
Ms. Reeta Kaul, Adv. for D-4.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

I.A. 23815/2025

1. The application under Order VII Rule 11 of Code of Civil Procedure, 1908 ('CPC') is filed by defendant no. 1 seeking rejection of the plaint.

2. The plaintiffs Kanak Trakru and Anmol Trakru filed a suit seeking partition of suit property and for declaration of interest of the plaintiffs and lien over the suit property as per the Will executed by Avtar Krishen Trakru and Raj Dulari Trakru.

2.1 In the alternative the prayer is that in the event Will is held to be invalid the suit property be partitioned as coparcenary/ancestral



property belonging to Hindu Undivided Family (hereinafter referred as 'HUF') in which the plaintiffs claim 1/12th share each. Further the prayer is for declaring the suit property as coparcenary/ancestral property belonging to an HUF.

2.2 The brief facts as pleaded are that Sh. Avtar Krishen Trakru the grandfather of the plaintiffs by utilising his retiral benefits acquired the suit property in his own name and in the name of his wife Smt. Raj Dulari Trakru. A company by the name of Trakru Projects India Private Limited was incorporated on 25.01.1980, utilising the retiral benefits. Sh. Avtar Krishen Trakru and Smt. Raj Dulari Trakru (testators) executed a registered Will dated 01.03.2017, detailing the beneficiaries and their respective shares in the property. Testators had two daughters Smt. Renu Trakru and Smt. Roma Trakru, defendant no. 1 & 3 respectively and a son Sh. Lalit Trakru, defendant no. 2. Defendant no. 4 is the wife of defendant no. 2. The plaintiffs are the children of defendant no. 2.

3. Learned counsel for the applicant argues that the suit is liable to be dismissed for failure to plead the details of coming into existence of HUF, the suit properties being owned by HUF and the properties inherited by defendant no. 2 to be ancestral properties. Reliance is placed on decisions of this court in **Harvinder Pal Singh vs. Laj Pal Singh & Ors.** 2015 SCC Online Del 14608, **Jai Narain Mathur & Ors. vs. Jai Prakash Mathur (Deceased) Thr. LRs.** 2016 SCC Online Del 986 and **Kritika Jain vs. Rakesh Jain & Anr.** in CS(OS) No. 679/2024.

3.1 The contention is that the plaintiffs being the children of



defendant no. 2 and the grandchildren of Sh. Avtar Krishen Trakru cannot seek partition during the lifetime of defendant no. 2 and that there is no cause of action to file the suit. Decision of this court in **Anchit Sachdeva & Anr. vs. Sudesh Sachdeva & Ors.** 2024 SCC Online Del 8768 is relied upon.

3.2 The submission is that Will dated 01.03.2017 is a joint Will whereby the entire estate after the death of Sh. Avtar Krishen Trakru came to Smt. Raj Dulari Trakru and the property in her hands became self-acquired and only she had the right to distribute it. The following portion of the Will is relied upon:

“In our wisdom, till either of us i.e., A.K. Trakru or Raj Dulari Trakru is alive, either of us shall be possessed of all our assets and properties mentioned in the Will as absolute owner and shall have unrestricted right and authority to use and enjoy the assets/properties/shares/liquid assets stated in this Will with all the power to realize and recover rent(s), interest and other profits or benefits thereof as we both are enjoying in our individual capacities as on date and anyone of us surviving shall have uninterrupted power to sell, rent the properties stated in the Will. Surviving Executant shall not be questioned about the sale, distribution, division of any money, profit, rent, interest. To make it clear, none can interrupt, resist, hinder or obstruct to the wisdom of surviving Executant about assets so stated herein or acquired herein after. It is made clear that this Will shall come into effect and operation upon the demise of both of us, when neither of us will be alive in this world. Only after our demise, the beneficiaries of this Will as listed on the first page shall be entitled to our estate.”

3.3 Reliance is on the decision of the Supreme Court in **K.S. Palanisami vs. Hindu Community in General and Citizens of Gobichettipalayam & Ors.** (2017) 13 SCC 15 to buttress the



argument that the nature of the Will is to be determined from the words used therein.

4. *Per contra* the main prayer in the suit is on the basis of Will dated 01.03.2017 wherein the plaintiffs are the beneficiaries and the details of the properties and their respective shares is specified. The submission is that the prayer for declaring that the suit property is owned by HUF is an alternative prayer, to be pressed in the event of the plaintiffs not succeeding in the first prayer. It is argued that under Order VII Rule 11, CPC there cannot be a partial rejection of the plaint. The decision of Supreme Court in **Bhim Rao Baswanth Rao vs. Madan Mohan Rao** 2023 (18) SCC- 231 is relied upon.

4.1 It is argued that the interpretation of the Will given by the applicant is illegal. The Will is for properties owned by Sh. Avtar Krishen Trakru and Smt. Ram Dulari Trakru. It is not intended in Will that after death of Sh. Avtar Krishen Trakru the properties in his name would become the properties of Smt. Ram Dulari Trakru. Rather the Will would come into operation after the death of both the testators, the surviving testator i.e. Smt. Raj Dulari Trakru in this case could have distributed the properties owned by her and not that of Sh. Avtar Krishen Trakru. Submission is that the nature and intent of the Will cannot be gone into in an application under Order VII Rule 11, CPC.

5. Order VII Rule 11, CPC enumerates six grounds on which the plaint can be rejected. The argument of the learned counsel for the applicant is confined to Order VII Rule 11 clause (a), CPC i.e. where the cause of action is not disclosed in the plaint.



6. Applications under Order VII Rule 11, CPC is to be dealt with only as per the pleadings in the plaint and no complicated legal questions or issue of interpretation can be decided. Reliance be placed upon the following judgments:

6.1 The Supreme Court in the case of **Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I** (2004) 9 SCC 512 held as under:

“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.

Cause of action

140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In *Vijai Pratap Singh v. Dukh Haran Nath Singh* [AIR 1962 SC 941 : 1962 All LJ 634] this Court held: (AIR pp. 943-44, para 9)

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition,



if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.”

6.2 The apex court in the case of **Vinod Infra Developers Ltd. V. Mahaveer Lunia and Ors.** 2025 SCC OnLine SC 1208 held:

“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.”

6.3 The Division Bench of this court in the case of **Krishan Kumar Vats v. Shri Shobha Ram Vats & Ors.** 2025 DHC 10981 DB held:



“24. On a perusal of the above-mentioned paragraph, it is evident that the Plaintiff, while instituting the suit, has disclosed a cause of action. Rejection of a plaint under Clause (a) of Order VII Rule 11 of the CPC is warranted only where the plaint, on its face, does not disclose any cause of action. The cause of action comprises the bundle of facts pleaded by the Plaintiff, which form the basis for initiating the proceedings. Judicial precedent recognises that if, upon a meaningful and not merely formal reading of the plaint, the Court concludes that no cause of action is made out, the power under Clause (a) may be invoked. However, such meaningful reading does not empower the Court to embark upon a fact-finding exercise or to render determinations on disputed facts. These issues can be adjudicated only after the parties are afforded an opportunity to lead evidence in accordance with the established procedure of a civil trial.”

(emphasis supplied)

7. The contention that for absence of pleadings details regarding existence of an HUF and the suit property being owned by the HUF does not enhance the case of the applicant. The first prayer in the suit is based on the Will dated 01.03.2017. The acceptance of contention of the learned counsel for the applicant against the alternative prayer would result in partial rejection of the plaint. The suit has to proceed as a whole and cannot be rejected partially on an application under Order VII Rule 11, CPC. Law laid down by the Supreme Court in ***Bhim Rao Baswanth Rao vs. Madan Mohan Rao*** 2023 (18) SCC-231 is referred:

“24. It is a salutary position in law that there cannot be a partial rejection of the plaint (or petition, as in this case) in



exercise of power under Order VII Rule 11, CPC. This court had stated this principle, in *Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.* In the following manner”

“This cannot elevate itself into a Rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected Under Order VII Rule 11. In all such cases, if the plaint survives against certain Defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.”

This principle was stated clearly, in *D. Ramachandran v. R.V. Jankiraman* which, in relation to an election petition, explained the position as follows:

“The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11 (a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order VII Rule 11 (a) CPC, the Court cannot dissect the pleading into several parts and consider whether each one of them disclosed a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition.”

8. The effect of the joint Will as to whether the suit property became the self-acquired property of Smt. Raj Dulari Trakru after the death of Sh. Avtar Krishen Trakru would require a decision on complicated questions of law and fact and cannot be decided on an application under Order VII Rule 11, CPC.

9. Another aspect is that during the course of the argument, the court is apprised that probate proceedings of the Will are pending in which the plaintiffs have filed an application for impleadment. There would be no occasion to prejudge the validity of the Will in an application filed Under Order VII Rule 11, CPC.



10. The last contention that the grand-children during the lifetime of their father have no right to seek partition of the joint property need not be dilated at this stage as it would have implications on the suit. Suffice to say that main prayer in the suit is on the basis that plaintiffs are beneficiaries in the Will dated 01.03.2017 and not for seeking partition of a joint estate being a coparcener or as successors of ancestral property.

11. For the reason mentioned above while dealing with arguments of learned counsel for the plaintiffs the citation relied upon by the plaintiffs need not be dealt with at this stage.

12. The contentions raised by the applicant are devoid of merit, in the application under Order VII Rule 11 there cannot be a partial rejection of the plaint and the nature and the intent of the Will cannot be determined at this stage, consequently the application is dismissed.

AVNEESH JHINGAN, J.

JANUARY 28, 2026

'JK'

Reportable:- Yes