



2024:DHC:8519



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

Reserved on: 12th September, 2024
Date of Decision: 05th November, 2024

+ **CS(OS) 441/2023 & I.A. 13786/2023 I.A. 29995/2024 I.A. 32144/2024 I.A. 32527/2024 I.A. 36922/2024**

SH. SUBHASH CHANDRA JARODIA

.....Plaintiff

Through: Mr Vikramjeet Singh Ranga, Adv.
alongwith plaintiff in person

versus

SH. VIJAYINDER KUMAR & ORS.

.....Defendants

Through: Mr. Ashutosh Nagar, Mr. Kunal
Taneja and Mr. Ishan Harlalka, Adv.
for D-1
Ms. Manvi Roy, Advocate for D-4

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 13786/2023 and I.A. 32144/2024 in CS(OS) 441/2023

1. I.A. 13786/2023 is an application filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC, seeking restraint against the defendant no.1 from creating any third-party interest in the property bearing no. M-111, Saket, New Delhi-110017, a plot of land admeasuring 167 sq. mts. ('suit property').
2. I.A. 32144/2024 is an application filed by defendant no. 1 seeking vacation of the ad-interim order dated 28.07.2023, whereby the parties were



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directed to maintain *status quo qua* the title and possession of the suit property.

Brief Facts

3. The plaintiff has filed the captioned suit for declaration that registered Gift Deed dated 03.09.2021 and registered Will dated 24.07.2017 executed *qua* the suit property by late Shri Chander Bhan, in favour of the defendant no.1 are null and void.

4. The plaintiff also seeks a decree of permanent injunction restraining defendant no. 1 from creating any third-party rights in the suit property.

5. The plaintiff has challenged the Gift Deed and the registered Will on the pleas that the same have been executed by late Sh. Chander Bhan under undue influence and coercion by defendant no.1. It is also averred that the plaintiff along with his siblings [i.e., defendant nos. 2 to 4] had contributed to the funds used for the purchasing the suit property and construction of the existing superstructure¹ on the suit property. It is stated that late Sh. Chander Bhan did not have enough income to purchase suit property and/or construct the superstructure on the suit property all by himself.

6. It is stated that facts pertaining to undue influence exercised by defendant no. 1 and execution of the Gift Deed first came to the knowledge of the plaintiff in January, 2023 when the plaintiff met late Sh. Chander Bhan in the hospital, where late Sh. Chander Bhan was admitted due to his ill health.

Arguments of the defendant no.1

7. Learned Counsel for defendant no. 1 stated that the allegations of undue influence or the alleged conversation between plaintiff and late Sh.

¹ Ground floor and first floor



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Chander Bhan in January, 2023 are false.

7.1 He stated that late Sh. Chander Bhan died on 05.02.2023 and Ms. Sunita Ranga i.e. defendant no. 4 herein immediately instituted a suit for partition with respect to the suit property i.e. CS (OS) 148/2023 before this Court on 21.02.2023.

7.2 He stated that in the said suit i.e., CS (OS) 148/2023 there was no averment by Ms. Sunita Ranga either with respect to the Gift Deed or alleged coercion communicated in January, 2023. He stated that defendant no. 1 herein filed his written statement on 11.04.2023 in CS (OS) 148/2023 along with the copies of registered Gift Deed dated 03.09.2021 and the registered Will dated 24.07.2017 to contend that the said suit for partition is without any cause of action. He stated that the said written statement was duly served on the plaintiff herein (defendant no.2 in CS(OS) 148/2023) on 11.04.2023 and it is after perusing the Gift Deed and the Will that the plaintiff herein filed the captioned suit in July, 2023 and raised the bogus plea of coercion and undue influence. He stated that no such allegation of coercion has been levelled by the other sister (i.e., one of the daughter of deceased) Ms. Kamlesh Nerwal i.e., defendant no. 3 in her written statement filed on 08.07.2023 in CS (OS) 148/2023.

7.3 He stated that the allegation that late Sh. Chander Bhan did not have sufficient funds to construct the suit property, is without any basis. He stated that late Sh. Chander Bhan had sufficient income and savings to construct the suit property. He stated that late Sh. Chander Bhan retired from a respectable post and was drawing a decent salary, which was sufficient for him to purchase the plot and carry out construction over the suit property.

7.4 He stated, on instructions, from defendant no. 1 that defendant no. 1



undertakes to this Court that he shall not sell the suit property without seeking prior permission of this Court, he however sought modification of the ex-parte ad-interim order dated 28.07.2023 to the extent so as to permit the defendant no. 1 to let out the suit property and/or use and occupy the said property as per his discretion.

7.5 He stated that defendant no. 1 is in sole and actual physical possession of the suit property.

Arguments of the plaintiff

8. In response, Sh. Subhash Chandra Jarodia i.e., plaintiff who was present in Court stated that it is possible that he may not have communicated the facts of exercise of undue influence and execution of Gift Deed dated 03.09.2021 communicated by late Sh. Chander Bhan to him in January, 2023, to his siblings Ms. Sunita Ranga i.e. defendant no. 4 and Ms. Ritu i.e. defendant no. 3. He stated that this would be the reason why it finds no mention in the pleadings of defendant nos. 3 and 4.

Arguments of defendant no.4 (as also plaintiff in CS(OS) 148/2023)

9. Ms. Manvi Roy, learned counsel for defendant no. 4 confirmed that her client had no notice of the existence of the Gift Deed dated 03.09.2021 or the registered Will dated 24.07.2017 at the time of institution of CS (OS) 148/2023 and this was the reason for not making any challenge to the said documents in the plaint of CS (OS) 148/2023. She stated that the plaintiff herein had not apprised defendant no. 4 about his January, 2023 conversation with late Shri Chander Bhan, which occurred in the hospital.

Analysis and Findings

10. This Court has considered the submission of the parties and perused the record.

11. It is a matter of record that late Sh. Chander Bhan was the recorded



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title holder of the suit property vide sale deed dated 18.03.2005. The registered Gift Deed dated 03.09.2021 had been executed by late Sh. Chander Bhan transferring the suit property in favour of defendant no. 1 during his lifetime. The registered Will previously executed on 24.07.2017 also bequeathed the suit property to defendant no. 1. To this extent, the transfer in favour of defendant no. 1 by way of Gift Deed is consistent with the bequest made in the registered Will.

12. The defendant no. 1 has placed on record the mutation letter issued by MCD dated 06.09.2021 mutating defendant no.1's name as owner in its records following the execution of the Gift Deed dated 03.09.2021. The defendant no. 1 has also placed on record electricity bills which show that the electric meter stands transferred in the name of defendant no. 1. The defendant no. 1 has asserted that he is in actual and physical possession of the suit property and that the suit property is under his lock and key.

13. The plaintiff on 21.08.2024 fairly conceded before this Court that he is not in actual physical possession of any portion of the suit property.

14. It is well settled that there is a presumption under the law that a registered document has been validly executed and it cannot be discarded or disregarded lightly and in a cursory manner. The Will in the present case was registered on 24.07.2017, which contained a bequest with respect to the suit property in favour of defendant no. 1 exclusively. The Gift Deed was registered on 03.09.2021 transferring the suit property in favour of defendant no. 1 and this transfer was consistent with the intention of bequest recorded in the Will dated 24.07.2017. The Gift Deed contains an endorsement of the Sub-Registrar that the contents of the document have been explained to the parties (i.e. donor and donee), who understand the



conditions and admit them as correct. The document also contains an endorsement of the Sub-Registrar that the parties (i.e. donor and donee) admit the execution of the document. Similarly, the Will also contains endorsement of the Sub-Registrar that the testator has admitted the execution of the Will and the contents therein.

15. The Supreme Court in its judgement **Prem Singh & Ors. v. Birbal**² has held that there is presumption of genuineness and validity attached to a registered document. The relevant para reads as under:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

(Emphasis supplied)

15.1 In view of these facts, prima facie the presumption of genuineness and validity of the Gift Deed shall have to be given effect to at this stage in favour of defendant no. 1.

15.2 The allegation of the plaintiff herein that late Sh. Chander Bhan confided in him in January, 2023 that he had executed the Gift Deed under undue influence/coercion fails to inspire any confidence at this prima facie stage, given the fact that plaintiff failed to share these relevant and material facts with his siblings i.e. defendant nos. 3 and 4 at the contemporaneous time. In fact, the stand of defendant no. 1 that plaintiff has concocted the plea of undue influence after being served with the copy of the Gift Deed and registered Will in April, 2023 in CS (OS) 148/2023 appears plausible.

15.3 The pleas of the plaintiff as regards contribution of funds to the purchase and construction of the suit property fails to impress this, Court.

² (2006) 5 SCC 353



The said plea is a bald averment unsupported by any documents whatsoever. The plaintiff has sought to urge in the plaint that on this basis he became a co-owner in the suit property during the lifetime of his father.

15.4 During arguments, plaintiff fairly conceded that he is himself a retired Government official and neither in his employment records nor in his ITR has the plaintiff claimed any co-ownership rights in the suit property. Moreover, the proposition of co-ownership urged by the plaintiff on the basis of alleged contribution to the construction funds has no basis in law and is bereft of any merits.

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.

16. The plaintiff herein on 28.07.2023 while praying for ex-parte ad-interim relief stated before this Court that he is residing in a portion of the suit property and this fact heavily weighed with the Court while passing the ex-parte ad-interim order directing *status quo* qua title and possession. However, the documents on record as well as the order dated 21.08.2024 evidence that the said assertion of physical possession of the plaintiff is factually incorrect and the suit property is in the exclusive physical possession of defendant no. 1 since 2021. Thus, the balance of convenience is also not in the favour of plaintiff and is in fact in favour of defendant no.1.

17. The defendant no. 1 has stated that defendant no. 1 undertakes to not sell the property without the prior permission of the Court and is seeking modification of the interim order dated 28.07.2023 to the extent it directs him to maintain *status quo* qua possession. The defendant no. 1 seeks limited permission to let out the suit property and/or use or occupy the said property.



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.

19. With the aforesaid direction, I.A. 13786/2023 and I.A. 32144/2024 stand disposed of and interim order dated 28.07.2023 stands modified as above.

20. Needless to state that the aforesaid observations are prima facie in nature and have been made for adjudicating the claims raised in these applications and shall not influence the determination of the pleas of the parties at the stage of final disposal.

I.A. 29995/2024 (Application under Order VII Rule 11 CPC on behalf of defendant no.1, seeking rejection of the plaint)

Arguments of the parties

21. This is an application filed by defendant no. 1 under Order VII Rule 11 CPC seeking rejection of the plaint on the following grounds among others: (i) no cause of action for institution of the present suit; (ii) the suit is undervalued; and (iii) the plaintiff has failed to deposit appropriate Court fees.

21.1 It is stated in view of the registered Gift Deed dated 03.09.2021, late Shri Chander Bhan was left with no right title or interest in the suit property at the time of his unfortunate demise on 05.02.2023. It is stated that in view of the transfer, the assertion of the plaintiff in the suit that he is a co-owner



of the suit property is contrary to the record.

22. It is stated that the plaintiff in this suit seeks a declaration that the Gift Deed dated 03.09.2021 as well as the registered Will dated 24.07.2017 is null and void. It is stated that the plaintiff in the plaint has valued the suit property at INR 3,00,00,000/- and has claimed a right to the extent of 1/5th share in the suit property. He stated that on this relief of declaration the plaintiff is obliged to pay ad-valorem Court fee as per Section 8 of the Suits Valuation Act, 1887. It is stated that the suit of the plaintiff does not fall under Section 7, paragraphs (v), (vi), (ix) and (x) of clause (d) of the Court Fees Act, 1870. It is stated that the plaintiff ought to have paid ad-valorem Court fee on the value of Rs. 3 crores declared in the plaint.

22.1 It is stated that the plaintiff has also failed to substantiate the valuation of Rs. 3 crores assigned to the suit property.

23. In reply, learned counsel for the non-applicant/plaintiff stated that since the plaintiff is not the executant of the Gift Deed, which is under challenge it is permissible for him to pay a fixed Court fee. He relies upon the judgment of Supreme Court in **Suhird Singh v. Randhir Singh & Ors.**³, and the judgments of other High Courts in the reply.

24. This Court has heard the learned counsel for the parties and perused the record.

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

³ [2010] 3 SCR 1121.



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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.

27. The valuation of the suit property at Rs. 3 crores is also without any basis and is contradicted by the valuation assigned by defendant no. 4 in CS (OS) 148/2023. Defendant no. 4 has valued the suit property at Rs. 10 crores and the said valuation was not disputed by the plaintiff herein in his pleadings in CS (OS) 148/2023.

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.

29.1 However, no arguments were addressed by either party on this issue at the hearing on 12.09.2024. Thus, to enable the parties to address arguments on the said issue, list the matter on 23.01.2025 for further arguments.

MANMEET PRITAM SINGH ARORA
NOVEMBER 05, 2024/rhc/sk/msh (JUDGE)