

A.F.R.

Judgment Reserved on- 12.09.2025

Judgment Delivered on- 19.09.2025

Neutral Citation No. - 2025:AHC:168128

Court No. - 35

Case :- FIRST APPEAL No. - 148 of 2017

Appellant :- Km. Deepika Rani

Respondent :- Vinay Bansal

Counsel for Appellant :- Deepak Singh, Pramod Kumar Srivastava, Rishi Bhushan Jauhari

Counsel for Respondent :- Ajay Singh, Amrendra Nath Singh, Vijay Prakash

Hon'ble Sandeep Jain, J.

1. The instant first appeal under Section 96 C.P.C. has been preferred by the plaintiff-appellant against the impugned judgment and decree dated 29.11.2016 passed by the Court of Ist Additional Civil Judge (Senior Division), Hapur in O.S. No.155 of 2016, Km. Deepika Rani vs. Vinay Bansal, whereby her declaratory suit for declaring that the alleged registered gift deed dated 03.09.2016, which was fraudulently got executed from her by the defendant, be declared null and void and also for restraining the defendant by a decree of permanent injunction from alienating the disputed property of the above gift deed and for interfering in her peaceful possession of the disputed property, has been rejected on an application under Order 7 Rule 11 C.P.C. of the defendant.

2. Factual matrix is that the plaintiff-appellant, Km. Deepika Rani and the defendant-respondent, Vinay Bansal are real sister and brother. The plaintiff filed O.S. No.155 of 2016 in the trial court with the averments that her father, Mahaveer Prasad died in the year 2002, leaving behind his wife Smt. Chandrawati, daughters Smt. Sushma, Smt. Neeta Garg, Smt. Rama Singh, Km. Deepika(plaintiff), Smt. Priti Garg and son Vinay Bansal(defendant).

3. She further averred that the disputed house having municipal No.18-15/992 and 992(1-9) is a two storeyed house in an area of 1200 sq. yard, in which, on the ground floor in an area of 125.46 sq. meter, five rooms and one stair case are constructed and on the first floor in an area of 125.46 sq. meter, five more rooms are constructed, the boundaries of which were mentioned at the end of the plaint, which was situated in Mohalla Sarai Chand Khan, Friganj Road, Hapur.

4. She further averred that her and defendant's father Late Mahaveer Prasad was the owner in possession of the above house, who died in the year 2002 and after his death, her mother, sisters and brother, all being legal heirs became the co-owners of the disputed house, in which, each was having 1/7th share.

5. She further averred that the marriage of her other sisters have been solemnized, she is still unmarried, the defendant is her real brother.

6. She further averred that she wanted to sell her 1/7th share in the disputed house, which was valued in excess of Rs.2 crores and from the sale consideration, she wanted to establish an Ashram for her salvation and public benefit because she decided to remain unmarried for her whole life.

7. She further submitted that she was also giving training of meditation and, as such, for a week or two weeks, she visited Osho Meditation Centre, Rishikesh, where she worked as meditation facilitator.

8. She further averred that when she expressed her intention to her mother and sisters for selling her share in the disputed house, then the defendant assured her that, if she sold her 1/7th share separately, then she will not get proper value of her share, as such, she should execute a Power of Attorney of her share in favour of the defendant, so he could by selling the whole property get proper value of it.

9. The plaintiff averred that being convinced by the above submission of the defendant, she executed registered Power of Attorney in favour of the defendant on 17.08.2016 and the defendant assured her that he will pay Rs.10 lacs within a week, but when this amount was not paid, then she had cancelled the registered Power of Attorney executed in favour of the defendant on 31.08.2016.

10. She further averred that after she got cancelled the registered Power of Attorney on 31.08.2016 in favour of the defendant, her mother, other sisters and defendant once again held consultations and on 03.09.2016, it was once again agreed that the plaintiff will execute an agreement to sell of her 1/7th share in the disputed property, for which, the defendant will pay her Rs.10 lacs as earnest money within a week and in accordance with this agreement, she was taken by the defendant on 03.09.2016 to Tehsil Compound, Hapur where in the presence of defendant's friend Nitin Saraswat, Sudhir Agarwal and defendant's female friend Km. Monika Bisla, by practising fraud and hatching conspiracy to usurp her share in the disputed property, in the garb of executing an agreement to sell, the defendant got her signature and thumb impression affixed on some papers and got them registered.

11. She specifically averred that the above documents were neither read over to her nor explained, because it was submitted to her that since the Registry Office is crowded, as such, she should read those documents subsequently and on this submission, she affixed her signature and thumb impression on the above documents without reading them, in which her mother Smt. Chandrawati and real sister Smt. Priti Garg were attesting witnesses.

12. She further averred that the defendant gave her post dated cheque no.000003 on 03.09.2016 for Rs.10 lacs drawn on HDFC Bank and when the cheque was deposited by her in her bank account in Punjab National Bank, Raj Nagar Branch, Ghaziabad, then it was dishonoured by the

defendant's bank with an endorsement that the defendant stopped payment of the cheque and subsequently on 19.09.2016, the dishonoured cheque was returned to her.

13. The plaintiff further averred that subsequently on inquiry, she became aware that on 03.09.2016 on the garb of executing agreement to sell, the defendant has got executed a registered gift deed of her 1/7th share in the disputed property, as such, the defendant has become the owner of her share in the disputed property without paying any consideration to her and by practising fraud upon her.

14. She further averred that on becoming aware of the above fraud practised by the defendant on her, she informed her family members and relatives and informed them about the fraud committed by the defendant, but they refused to help her in this matter, as such, the plaintiff filed the suit for the following reliefs:-

(i). By a declaratory decree of the court granted in her favour against the defendant, it be declared that the registered gift deed dated 03.09.2016 with respect to her 1/7th share in house No.18-15/992 and 992(1-9) is a null and void document.

(ii). By decree of permanent injunction granted in her favour against the defendant, the defendant be restrained from alienating, transferring the disputed property and also from interfering in the peaceful possession of the plaintiff, with respect to her 1/7th share in the disputed property.

15. The defendant, Vinay Bansal moved an application under Order 7 Rule 11 (d) C.P.C. on the ground that the plaintiff has got no share in the disputed property in accordance with Section 6 of the Hindu Succession Act, as amended in the year 2005. The suit is barred by Section 6 of the above Act, as such, the plaintiff's suit be rejected under Order 7 Rule 11 (d) C.P.C.

16. The plaintiff opposed the above application of the defendant by filing her objections, in which she averred that she only claimed the relief of declaring the gift deed dated 03.09.2016 as null and void and also the relief of permanent injunction, regarding which she has got cause of action and she has also paid court fees, as such, her suit is not barred under Order 7 Rule 11 CPC. She further averred that her suit was also not barred under Section 6 of the Hindu Succession Act. The defendant had not filed his written statement and he wanted to deliberately delay the disposal of the suit. With these submissions, it was prayed that the defendant's application be rejected.

17. The trial court by the impugned order dated 29.11.2016 allowed the defendant's application under Order 7 Rule 11 CPC on the ground that the plaintiff's father died in the year 2002 and the plaintiff averred that being the legal heir of her father, she became owner of 1/7 share in the disputed property but since, her father died before the enactment of the Hindu Succession (Amendment) Act 2005, as such, she had no right in the disputed property because the daughters were given right in the Mitakshara Joint Hindu Family property only through the above Amendment Act and prior to the enforcement of the Act, daughter had no right in the property of the Mitakshara Joint Hindu Family. The trial court concluded that since the plaintiff's father died before the enforcement of the above Act of 2005, as such, on the demise of the plaintiff's father in the year 2002, she did not inherit any right in the disputed property.

18. The trial Court also concluded that since the alleged gift deed was executed regarding the plaintiff's 1/7th share in the disputed property, in which, legally the plaintiff had no share, as such, the alleged gift deed was a void document on the basis of which the defendant had acquired no right, title, interest in the disputed property and on the basis of the alleged gift deed, the plaintiff has also got no cause of action to file the instant suit. The trial court concluded that since the plaintiff had no share

whatsoever in the disputed property, as such, she had no right to get declared any document, void regarding her share in the disputed property, because it would be a futile exercise. With this reasoning, the trial court dismissed the plaintiff's suit being barred under Order 7 Rule 11 CPC, aggrieved against which, the plaintiff filed the instant First Appeal under Section 96 CPC.

19. Learned counsel for the plaintiff-appellant submitted that the impugned order of the trial court is wholly perverse and illegal because from the perusal of the plaint averments, it is clear that the disputed property was the self acquired property of the plaintiff's father late Mahavir Prasad. The disputed property was never a property of the Mitakshara Joint Hindu Family, as such, the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005 never applied on the disputed property. He further submitted that since the disputed property was the property of plaintiff's father Mahavir Prasad, as such, on his demise, the property devolved on his seven heirs equally, in which, the plaintiff had 1/7th share and regarding this share, the defendant had got fraudulently executed a gift deed from the plaintiff, in the garb of executing an agreement to sell.

20. Learned counsel for the appellant further submitted that the plaint averments specifically stated, that a fraud was practiced by the defendant upon the plaintiff by getting the alleged gift deed executed in his favour. The plaintiff has got cause of action to file the instant suit. Only after trial, it will be known whether the averments of the plaintiff are true or false and at the initial stage itself, the plaint cannot be outrightly rejected. With these submissions, it was prayed that the appeal be allowed and the suit be restored to its original number and the trial court be directed to decide the case on merits after hearing both the parties, in accordance with law.

21. Per contra, learned counsel for the defendant-respondent submitted that the order of the trial court is perfectly legal because the plaintiff was

not having any share in the disputed property of her deceased father, as such, even if, it is assumed that the defendant had got fraudulently executed the alleged gift deed in his favour, even then, no right was conferred on the defendant on the basis of that gift deed which was a void document and since the plaintiff was not having any share in the disputed property, she is also not entitled to the relief of permanent injunction. Learned counsel for the respondent submitted that in view of these facts, the trial court had not committed any illegality in dismissing the plaintiff's suit under Order 7 Rule 11 CPC.

22. I have learned counsel for the parties and perused the record.

23. The Apex Court in the case of ***Prem Kishore & others Vs. Brahm Prakash & others, (2023) 19 SCC 244*** has held that for deciding an application under Order 7 Rule 11 (d) CPC, the following principles are to be followed:-

- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;
- (ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

24. The Apex Court in the case of ***Kuldeep Singh Pathania vs Bikram Singh Jaryal, (2017) 5 SCC 345*** has held that Court has to read the entire plaint as a whole to find out whether it discloses a cause of action or not. If the plaint discloses cause of action, then it cannot be rejected under Order 7 Rule 11 (a) CPC. Whether the plaint discloses a cause of action, is a question of fact, which has to be gathered on the basis of the plaint averments taking them to be true. As long as plaint discloses a cause of action, mere fact that plaintiff may not succeed in suit cannot be a ground for rejection of the plaint.

25. Section 6 of the Hindu Succession Act, 1956 as is substituted by Act 39 of 2005 (w.e.f. 09.09.2005) reads as under:-

Section 6- Devolution of interest in coparcenary property-*(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall-*

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the

coparcenery property shall be deemed to have been divided as if a partition had taken place and-

- (a) the daughter is allotted the same share as is allotted to a son;*
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.*

Explanation.--For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or*
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the*

same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.

Explanation--*For the purposes of clause (a), the expression son, grandson or great-grandson shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).*

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

Explanation.--*For the purposes of this section partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.*

26. The Apex Court in the Case of ***Vineeta Sharma vs. Rakesh Sharma and others, (2020) 9 SCC 1 (by three Judges)***, has held that daughter born before date of enforcement of the 2005 Amendment Act has got same rights as daughter born on or after the amendment. It was held that if a daughter is alive on the date of enforcement of Amendment Act, 2005, w.e.f. 09.09.2005, she becomes a coparcener w.e.f. the date of Amendment Act, 2005 (i.e. 09.09.2005) irrespective of whether she was born before the said amendment. It was further held that provisions in substituted Section 6 of the Act confer status of coparcener on daughter born before or after the amendment in the same manner as son with same rights and liabilities. It was further held that rights under substituted Section 6 can be claimed by daughter born prior to the amendment w.e.f. date of amendment with saving of post transactions as provided in proviso to Section 6 (1) read with Section 6 (5) of the Hindu Succession Act.

27. It was further held by the Apex Court that since right in coparcenery of daughter under the substituted Section 6 is by birth, it is not at all

necessary that father of daughter should be living as on date of coming into force of the Amendment Act.

28. From the above law laid down by the Apex Court in the case of *Vineeta Sharma (supra)*, it is evident that if a daughter is born before the enforcement of 2005 Amendment Act (w.e.f. 09.09.2005), even then, she has got right in the coparcenary property w.e.f. 09.09.2005 and it is also evident that, she has got the same rights in the same manner as a son. It is also apparent that it is not essential that her father should be alive on the date of enforcement of the Amendment Act i.e. 09.09.2005.

29. From the averments of the plaint, it is apparent that nowhere the plaintiff has claimed that she is a coparcener in the Mitakshara Hindu Joint Family of his father Mahaveer Prasad.

30. From the plaint averments, it is apparent that the disputed property was the self-acquired property of her late father Mahaveer Prasad, who died in the year 2002, which according to Section 8 of the Hindu Succession Act, 1956 devolved on the 7 legal heirs of her father and being one of the legal heir, she also became owner of the 1/7th share in the disputed property. Even if, for the sake of argument, it is assumed that the disputed property was the property of Mitakshara Joint Hindu Family, even then, in the light of the law laid down by the Apex Court in the case of *Vineeta Sharma (supra)*, she was having equal right in the coparcenary property, as her brother. The Apex Court has very clearly held that from 09.09.2005, i.e. the date when the Amendment Act of 2005, became effective, a daughter who was alive on this date, became a coparcener, irrespective of whether she was born before the said Amendment.

31. In view of this pronouncement of law by the Apex Court, the finding of the trial court that the plaintiff was not having any share in the disputed property, on the demise of her father, is totally erroneous and perverse finding.

32. If the disputed property was the self acquired property of plaintiff's father Mahaveer Prasad, then the plaintiff was having 1/7th share in the disputed property, and even if, the disputed property belonged to Mitakshara Joint Hindu Family, even then, she was a coparcener in that property and was entitled to the same share as her brother w.e.f. 09.09.2005, i.e. the date when the Amendment Act of 2005 became effective. The plaintiff has nowhere averred in the plaint that she has got no share in the disputed property.

33. It is apparent that the plaintiff was having right in the disputed property on the date of the filing of the suit on 04.10.2016 and as such, had cause of action to file the instant suit.

34. It is apparent that the plaintiff alleged that her brother had got executed fraudulently a gift deed from her, in the garb of executing an agreement to sell, which she claimed to be a void document. It is well settled that while deciding Order 7 Rule 11 C.P.C. application, the Court is not to examine the plaint case on merits whether the plaintiff is going to succeed or not, and only at this stage, the plaint averments are to be read to ascertain whether any cause of action has arisen to the plaintiff to file the instant suit.

35. In view of the above facts, it is apparent that plaintiff was having a share in the disputed property regarding which her brother had fraudulently executed a gift deed in his favour regarding which the plaintiff had sought relief of declaration for declaring the alleged gift deed to be a null and void document and for restraining the defendant by a decree of permanent injunction from alienating her 1/7th share in the disputed property and for restraining him from interfering in the peaceful possession of the disputed property, which cannot be said to be barred by any law.

36. Certainly, the trial court erred in concluding that the plaintiff's suit was barred by the provisions of Section 6 of the Hindu Succession Act, as amended in the year 2005.

37. In view of the above, the impugned judgment of the trial court is wholly perverse, which needs to be set aside by this Court.

38. Accordingly, the instant appeal is **allowed** and the impugned judgment and decree dated 29.11.2016 passed by the Court of Ist Additional Civil Judge (Senior Division), Hapur in O.S. No.155 of 2016, Km. Deepika Rani vs. Vinay Bansal, is set aside and the original suit is restored to its original number.

39. The trial court is directed to decide the suit as expeditiously as possible, in accordance with law.

40. Parties shall bear their respective costs. Office is directed to prepare the decree accordingly.

41. Interim order, if any, stands vacated.

42. All the pending applications, if any, stand disposed of.

43. Office is directed to send back the original trial court record, if received, forthwith.

Order Date-19.09.2025
Himanshu/Mayank

(Sandeep Jain, J.)