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

+ **Date of Decision: 25.02.2016**

% **CS(OS) 199/2015**

SUNIL MEHRA AND OTHERS Plaintiffs

Through: Mr.Rajesh Gupta, Advocate.

versus

SATEN KAPOOR AND OTHERS Defendants

Through: Mr. Gautam Gupta, Advocate for
defendant Nos. 1 and 2.

Mr.Arvind Chaudhary & Mr. Harish
Kumar Dua, Advocates for defendant
No. 3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

I.A. No.23810/2015 (Under Order 7 Rule 11 CPC)

1. The aforesaid application has been moved by defendant No. 3 under Order 7 Rule 11 CPC for rejection of the plea. Before setting out the plea raised by the defendant No. 3/applicant in this application, it is necessary to take note of the case of the plaintiffs set out in the plea, *inter alia*, qua defendant No. 3.

2. The case of the plaintiffs is that late Ms. Kanta Mehra was the owner

of two properties i.e. property No. C-4/8, Safdarjung Development Area, New Delhi, (described in the plaint as 'property No. 1') and Plot No. 559, Block A, Palam Vihar, Village Chauma, Gurgaon, Haryana (described in the plaint as, 'property No. 2'). Ms. Kanta Mehra was a self-made and independent lady actively involved in business pursuits and led a socially active life. She was a partner in M/s Aspiration International with one Mr. Padam Kapoor. Late Ms. Kanta Mehra was a spinster and expired on 13.12.2010 without leaving any class I heirs. The plaintiffs and defendant Nos. 1 and 2 are claimed to be the class II heirs of late Ms. Kanta Mehra.

3. The case of the plaintiffs is that after the demise of her sister Mrs. Raj Kapoor on 29.10.2002, late Ms. Kanta Mehra generally resided with the family of her deceased sister-which is referred to in the plaint as the 'Somnath Family'. The plaintiffs claim that late Ms. Kanta Mehra owned ground floor of property No. E-61, South Extension Part I, New Delhi. It is claimed that Ms. Kanta Mehra had assured her brother late Mr. A.N.Mehra that she would eventually transfer her rights in the said property No. E-61, South Extension Part I, New Delhi in favour of her brother late Mr. A.N. Mehra, or his family.

4. The plaintiffs claim that Somnath Family ill-treated Ms. Kanta Mehra. On 21.07.2007, her brother Mr. A.N.Mehra expired leaving Ms. Kanta Mehra shattered and unsecured. Somnath Family intensified her harassment and exhibited greed to control her movable and immovable property and assets. Her properties were the sole cause for infliction of miseries on her, taking advantage of her loneliness. The plaintiffs state that Somnath Family took undue advantage of her circumstances and robbed late Ms. Kanta

Mehra of all her happiness, wealth, liberty and social circle. The plaintiffs state that late Ms. Kanta Mehra voluntarily executed a Gift Deed dated 16.02.2009, gifting one of her properties i.e. E-61, South Extension Part I, New Delhi, to plaintiff No. 1. The plaintiffs stated that late Ms. Kanta Mehra did not reflect or express her desire, intention or agreement to gift, or give away, or bequeath any of her properties to Somnath Family. The plaintiffs claim that the gift of Ground Floor of E-61, South Extension, Part-I, New Delhi infuriated Somnath Family, who ill-treated Ms. Kanta Mehra. This proved detrimental to her health, comfort and peace. The plaintiffs were prevented from meeting or communicating with her. In April, 2010, late Ms. Kanta Mehra fell sick and was hospitalized. Even in her ailment, Somnath Family prevented the plaintiffs from meeting her, and only Mr. Padam Kapoor and/or his office representative were permitted to meet her. Upon her discharge from hospital, she was largely curtailed on the pretext of her health. She was restrictively permitted to visit her office with her driver and attendant.

5. The plaintiffs state that late Ms. Kanta Mehra confided with Mr. Padam Kapoor about her miseries and atrocities inflicted upon her by Somnath Family, and how gradually they controlled her independence to deprive her of all her wealth, jewellery, movable assets – including bank assets and vital documents. It is alleged that she used to lament the betrayal she suffered at the hands of Somnath Family, and her compulsion to stay with them. The plaintiffs allege that late Ms. Kanta Mehra remained under constant apprehension of misappropriation of her assets/wealth at the hands of Somnath Family.

6. The plaintiffs claim that around the end of the year 2009, late Ms. Kanta Mehra was completely deprived of her liberties, and was virtually put on house arrest. Her driver was removed. She became extremely feeble and infirm and became unable to visit the office on her own. She would be picked up by Mr. Padam Kapoor and/or Mr. Govind-an employee of Aspirations International from the residence. In 2010, Ms. Kanta Mehra was repeatedly hospitalized and the Somnath Family refused to take care of her and bear her medical expenses. Mr. Padam Kpoor or Mr. Govind alone could meet her and took care of her. The plaintiffs claim that they were assisting and helping Mr. Padam Kapoor in taking care of late Ms. Kanta Mehra. The medical expenses including hospitalization expenses were borne by M/s Aspirations International.

7. The plaintiffs claim that on 13.04.2010, late Ms. Kanta Mehra was discharged from the hospital. Due to illness and multiple ailments, she became extremely frail, imbalanced and incapable of taking any rational decision, and was not fit to take her own care and became incapable of even carrying out her personal daily chores. Per force, she had to stay with Somnath Family, but none in the family was ready to take care of her. The plaintiffs allege that the full time nurse arranged to take care of her was removed by the Somnath Family. The plaintiffs allege that on 30.04.2010, Ms. Kanta Mehra was extremely unwell and under heavy medication and was not in a position to move at all. The plaintiff No. 2 was communicated by Mr. Padam Kapoor the pitiable condition of late Ms. Kanta Mehra in or around September, 2010 with a request to ensure her safety as well as the safety of her properties. The endeavour of plaintiff No. 1 to meet Ms. Kanta

Mehra failed as the Somnath Family refused him entry in the house, and did not permit plaintiff No. 1 to speak or interact with Ms. Kanta Mehra.

8. The plaintiffs state that in October, 2010, Mr. Padam Kapoor informed plaintiff No. 2 that Somnath Family expressed resentment at his taking care of late Ms. Kanta Mehra. Mr. Padam Kapoor was allegedly told not to bother late Ms. Kanta Mehra. Allegedly, he was also instructed not to come to the residence of Somnath Family, as late Ms. Kanta Mehra would not be in a position to look after the affairs of Aspiration International, nor visit the office. The plaintiffs state that in November, 2010, during the visit to India of plaintiff No. 2, he visited Mr. Padam Kapoor and learnt of the atrocities inflicted by Somnath Family on late Ms. Kanta Mehra. When two plaintiffs visited the house of Somnath Family, they were denied entry and not permitted to meet late Ms. Kanta Mehra.

9. Late Ms. Kanta Mehra expired on 13.12.2010. The plaintiffs claim that Somnath Family with pre-conceived deceitful intention, adopted unjust and illegal means, and played every trick upon late Ms. Kanta Mehra, to deceitfully grab her properties and denude her of all her assets without her knowledge, consent, wish and desire; and in furtherance of such oblique intentions, Somnath Family clandestinely exercised coercion, undue influence, deceit and fraud upon late Ms. Kanta Mehra causing her to unknowingly and/or forcibly execute, without volition, consent and knowledge the impugned Will dated 30.04.2010, impugned Gift deed dated 30.11.2010 and impugned sale deed dated 02.11.2010. Before late Ms. Kanta Mehra could realize the fraud played upon her, she expired on 13.12.2010.

10. The plaintiffs were not aware and had no knowledge of the purported execution of the said three documents. The plaintiffs claim to have learnt of the Will upon receiving summons in the Probate Petition filed in respect of the Will dated 30.04.2010. The plaintiffs state that upon perusal of the Will dated 30.04.2010, they became suspicious as it related to only the movable assets. The plaintiffs then made inquiries and learnt of the impugned gift deed dated 30.11.2010 in respect of property No. 1 and the sale deed dated 02.11.2010 in respect of property No. 2 in favour of defendant No. 3/applicant. The plaintiffs, *inter alia*, state that the impugned gift deed in respect of property No. 1 and the sale deed in respect of property No. 2 are both ex facie forged and fabricated document and they were deceitfully obtained. They were executed apparently without the executrix volition, consent and knowledge. The doner/transferor had no intention of gifting and/or selling or alienating the said two properties.

11. The plaintiffs claim that late Ms. Kanta Mehra executed her Will dated 10.09.2010 which was accidentally found by Mr. Padam Kapoor. The plaintiffs claim that the same is the last and final bequest made by late Ms. Kanta Mehra. The plaintiffs have made pleas in relation to the impugned gift deed dated 30.11.2010 and the impugned sale deed dated 02.11.2010 in para 29 of the plaint. It is claimed that both the gift deed and the sale deed are ex facie forged and fabricated documents and/or deceitfully obtained as earlier explained. It is claimed that these documents were executed without the volition, consent and knowledge of late Ms. Kanta Mehra, and that she had no intention of gifting and/or selling or alienating the said properties to the respective defendants. The plaintiffs have set out the following reasons

for claiming that the documents are illegal and liable to be cancelled:

“(i) Both the impugned documents have purportedly been executed just few days before unfortunate death of late Ms.Kanta Mehra on 13.12.2010. She has not time, occasion or opportunity to detect the fraud played upon her or even to realise that she had been duped and defrauded:

(ii) Late Ms.Kanta Mehra never possessed any intention to gift/or transfer her properties to “Som Nath Family” or to defendant No.1 & 2, and this was exactly what she was preventing right from year 2003 onwards. The intention is definitely not reflected either from the circumstance of late Ms.Kanta Mehra or from her conduct. If she had any intention to bequeath, gift or transfer the suit properties to Son Nath Family” or to defendant No.1 & 2, or to pass on any benefit there under in their favour, she would have executed a gift deed or transfer document in their favour in 2009 itself simultaneous to the execution of the gift deed dated 16.02.2009 made in favour of plaintiff No.1:

(iii) Purported execution of Gift Deed just before her demise is seemingly an act done in haste, and at that time Ms. Kanta Mehra was in extreme condition of ill health. At that time she was neither in state of sound disposition, nor in her senses nor physically fit. There was no reason to execute the impugned documents just a few days prior to her death:

(iv) During this doubtful period “Som Nath Family” had kept late Ms. Kanta Mehra in forcible confinement without permitting her to meet or interact with anyone. This itself raises doubt on the genuine and due execution of the impugned documents. If she had been in her sound state of health, she would have naturally spoken and/or interacted with Mr.Padam Kapoor, and she would have made Mr.Padam Kapoor as a witness to the transaction. Absence of Mr.Padam Kapoor is fatal to genuineness of the transactions:

(v) Purported Gift Deed is without natural love and/or

affection between the donor and donee as on the date of execution of the gift deed and/or immediately prior thereto, as such the alleged transaction is neither voluntary act of the donor nor act of her volition. Rather it is an act under coercion, duress and undue influence, performed unknowingly by the donor and without her senses.

(vi) During material period i.e. at time of purported execution of the impugned documents, donor/transferee was incapacitated due to severe old age, constant ailment and heavy medication, which undoubtedly affected her mind and she was not in position to take any rational decision.

(vii) As late Ms.Kanta Mehra incapacitated any physically unfit even to take care of own self, meet her personal and physical requirement, and incapacitated to meet anyone or even visit her office, it raises serious doubts that she could have capacity and physical strength and alertness to execute the gift deed.

(viii) The alleged sale is unjustified and without legal necessity. There was no necessity or compulsion for late Ms.Kanta Mehra to sell property No.2. She had no dearth of money, and had sufficient moveable assets to satisfy her need. If at all she had any requirement of money, she would have rather sold her moveable assets, which was far simpler in her circumstances, That apart, her expenses were being taken care by M/s. Aspirations International.

(ix) Abrupt sale of the property itself casts serious doubt on the genuineness of the transaction. It is highly improbable for an ailing person in her extreme old age to abruptly sell the property without any rational or bona fide reason. Indeed it casts a serious doubt on the persons under whose control the transferor was at the time of alleged sale.”

12. It would be seen that amongst the reasons enumerated hereinabove, qua the sale deed in relation to property No. 2 in favour of the applicant/defendant No.3, the reasons mentioned at serial nos. (i), (iv), (vi),

(viii) and (ix) alone are relevant. The other reasons pertain to the execution of the gift deed in relation to property No. 1 in favour of defendant Nos. 1 and 2. Defendant No.3 is not concerned with them.

13. The plaintiffs allege that the defendants clandestinely jointly and/or severally forged and fabricated, inter alia, the sale deed dated 02.11.2010 by exercising deceit, coercion, undue influence and fraud upon late Ms. Kanta Mehra by taking advantage of her extreme ill-health. The plaintiffs claim that the said documents are thus invalid, null and void ab initio and are liable to be cancelled.

14. So far as territorial jurisdiction of the Court is concerned, the averment made by the plaintiffs in the suit is as follows:

“The material part of cause of action for filing the suit has taken place exclusively within the jurisdiction of this Hon’ble Court. Property No.1 is situated at Delhi, and defendant No.1 & 2 also voluntarily reside in Delhi, and the impugned gift deed dated 30.11.2010 was also executed at Delhi. Therefore, entire cause of action vis-a-vis property No.1 has taken place in Delhi.

Property No.2 is situated in Gurgaon, Haryana. Defendant No.3 is addressed at Gurgaon, and the impugned sale deed dated 02.09.2010 is seemingly registered at Gurgaon, Haryana; but is purportedly executed in Delhi. However, material aspects of alleged sale relating to fraud, misrepresentation and duping late Ms.Kanta Mehra etc. have all taken place in Delhi.

Be that as it may, as execution of impugned documents emanates from same series of illegalities, major essential cause of action has taken within the Jurisdiction of Delhi Court. Therefore, in view of Section 17 of Code of Civil Procedure, suit can validly be filed within the Courts at Delhi. In view of

pecuniary value of the suit, the suit Hon'ble Delhi High Court has requisite jurisdiction to entertain and try the suit."

15. Having narrated the case of the plaintiff as set out in the plaint in detail, I may now turn to the grounds taken by the applicant/defendant in the aforesaid application. The applicant/defendant No. 3 submits that the plaintiffs are challenging the sale deed in respect of property No. 2 after almost 4½ years after the demise of late Ms. Kanta Mehra on 13.12.2010 and that the suit is barred by limitation. The applicants also state that this Court lacks territorial jurisdiction to adjudicate the suit in respect of the property situated at Palam Vihar, Gurgaon, i.e. property No. 2 as the sale deed dated 02.11.2010 was executed and got registered at the office of the Sub-Registrar, Gurgaon and pertains to the property situated at Palam Vihar, Gurgaon, which is beyond the jurisdiction of this Court. The plaintiffs are seeking relief of possession in respect of the property situated at Gurgaon, Haryana, which as aforesaid, is beyond the jurisdiction of this Court. The applicant states that the suit lacks cause of action qua the property at Palam Vihar, Gurgaon, as late Ms. Kanta Mehra had sold the said property during her life time for valuable consideration received by her from the applicant/defendant No. 3. The applicant/defendant No. 3 further submits that the agreement to sell in respect of property No. 2 was entered into on 09.09.2010 and was witnessed by two witnesses, namely, Radhika Kapoor and Madhu Nangru. On that date, Ms. Kanta Mehra was in sound disposing mind. The plaintiffs are themselves placing reliance on a purported Will dated 10.09.2010, claimed to have been executed by Ms. Kanta Mehra, which is attested/certified by a doctor to say that she was hale and hearty on 10.09.2010. The defendant No. 3/applicant further states that

a perusal of the entire plaint shows that the plaintiffs do not state as to what fraud or deceit had been played upon late Ms. Kanta Mehra by defendant No.3. Thus, defendant No.3/applicant seeks rejection of the plaint qua property No.2 and qua the applicant/ defendant No.3 for the reasons aforesaid.

16. The submission of learned counsel for the plaintiffs is that Section 17 CPC enables the plaintiffs to file the present suit to obtain relief respecting immovable property situated within the jurisdiction of different Courts. The submission is that both the properties, i.e. property No.1 and property No.2 form part of the estate of late Ms. Kanta Mehra, and for purposes of Section 17, have to be construed as one property. Since, admittedly, one of the properties, i.e. property No.1 is situated within the jurisdiction of this Court, this Court has the territorial jurisdiction to entertain the suit in its entirety.

17. The further submission of learned counsel for the plaintiffs is that Order I Rule 3 CPC permits the plaintiffs to join all persons as defendants in one suit, where the right to relief in respect of, or arising out of, the same act or transaction, or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative, and if separate suits were brought against such persons, common question of fact or law would arise.

18. Mr. Gupta submits that the fraudulent and deceitful conduct of the defendants qua Ms. Kanta Mehra, which led to the execution of the impugned Will, the Gift Deed in respect of property No.1, and Sale Deed in respect of property No.2 form part of the same transaction or series of acts

or transactions. He further submits that if separate suits were required to be brought in relation to the property No.1, and the property No.2, the averments of the plaintiffs in both the suits would be the same, and even if defendant No.3 would have no concern with the suit in relation to the property No.1, in the suit filed in respect of the property No.2, the plaintiff would have to implead all the defendants herein as party defendants. In such a suit, the same averments would be made by the plaintiffs and the common question of fact and law would arise in the two suits. He submits that the same evidence would be required to be led in both the suits.

19. He also placed reliance on Order I Rule 5 CPC, which states that it shall not be required that every defendant shall be interested as to all the reliefs claimed in any suit against them. Thus, merely because the defendant No.3/ applicant may not be interested in the relief claimed in the suit qua the alleged Will dated 30.04.2010 and the alleged Gift Deed dated 30.11.2010 qua property No.1, his joinder as a party in this suit cannot be faulted as the relief has been sought in respect of property No.2 as well. He submits that under Order II Rule 3 CPC, the plaintiff may unite in the same suit several causes of action against the same defendants jointly. He submits that the cause of action against defendants No.1 & 2 on the one hand, and defendant No.3 on the other hand is the same.

20. Learned counsel for the plaintiffs submits that the averments made in the plaint, when read as a whole, do not make out a case for rejection of the plaint under Order VII Rule 11 CPC on any ground whatsoever. In support of his submissions, learned counsel for the plaintiffs has sought to place reliance on *Iswar Bhai C. Patel Vs. Harihar Behera & Another*, (1999) 3

SCC 457. In this decision, while examining Order I Rule 3 CPC, the Supreme Court observed:

“12. This Rule requires all persons to be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same act or transaction or series of acts or transactions against those persons whether jointly, severally or in the alternative. The additional factor is that if separate suits were brought against such persons, common questions of law or fact would arise. The purpose of the Rule is to avoid a multiplicity of suits.”

21. Reliance is placed on ***Inder Bahadur Singh Vs. Sita Ram & Others***, AIR 1941 All. 209. In this case, the plaintiff filed a suit for avoidance of proof of alienations made over a period of 14 years by the Karta of the joint Hindu Undivided Family, of which the plaintiff was a member. The plaintiff alleged that the said transactions were either without consideration, or had insufficient consideration, or that they were bad for illegality of consideration and also on the ground of immorality of purpose. There were 62 defendants in the suit. One of the pleas in defence was that the suit was bad for multifariousness. The Trial Court returned the plaint to the plaintiff with direction to institute separate suits in respect of each set of defendants. The plaintiff approached the High Court in revision. The High Court reversed the decision of the Trial Court by observing that the various sets of defendants in the case have a community of interest, in the sense, that they all derive their title from one of the same person. The cause of action against them is the same as it would have been against the Karta, if he were alive. It was held that the suit is not bad for misjoinder of causes of action.

22. The plaintiffs also placed reliance on ***Shew Narayan Singh Vs.***

Brahmanand Singh & Others, AIR 1950 Cal. 479. The plaintiff in this case instituted the suit to claim damages for breach of contract against one defendant. The plaintiff alleged that the defendant in collusion with one Bindeswari Singh breached the contract. The plaintiff sought attachment before judgement, and at that stage learnt that few others had conspired together and pursuant to that conspiracy, Ram Narain Singh broke the contract. The plaintiff sought amendment of the plaint by alleging conspiracy and adding the aforesaid persons as defendants. He claimed damages against all the defendants. The question which arose before the High Court was whether the plaintiff should be allowed to amend his plaint in the manner sought and to add the additional defendants. The Court held that the right to relief claimed by the plaintiff is in respect of, or arising out of, the same act or transaction or series of act or transactions in the facts & circumstances narrated hereinabove.

23. On the same lines, the decision of the Calcutta High Court in ***Mst. Ramdayee Vs. Dhanraj Kochar & Others***, AIR (1972) Cal. 313, is also relied upon by the plaintiffs. Reliance is also placed on ***Premlata Nahata & Another Vs. Chandi Prasad Sikaria***, IV (2004) BC 602. In this case, the defendant obtained loans from different family members of the Nahata family. The plaintiffs – who had advanced the loans, filed a common suit against the defendant. The High Court held such a suit to be maintainable.

24. Lastly, reliance is placed on ***Microsoft Corporation & Another Vs. Sujan Kumar & Others***, 226 (2016) DLT 349. This decision, in fact, appears to be against the plea raised by the plaintiffs. In paragraph 7 of the judgment, this Court held that uttering of mantras of existence of common

question of law and fact only, by reproducing the legal language of Order I Rule 3 CPC and Order II Rule 3 CPC, cannot and does not mean that requirements of law stand complied with. Requirements of law are complete only when said factual and legal averments are made in the pleading which will show existence of common questions of law and fact, which are sought to arise.

25. On the other hand, the submission of learned counsel for the defendant No.3/ applicant is that the cause of action in relation to the impugned Sale Deed qua property No.2 has arisen only upon the execution of the said deed in favour of the defendant No.3/ applicant. The said Sale Deed was executed and registered at Gurgaon; the property itself is situated in Gurgaon and even defendant No.3 is residing in Gurgaon. Thus, in respect of the relief sought qua property No.2, this Court has no territorial jurisdiction to deal with the suit.

26. Learned counsel submits that none of the cases cited by the plaintiffs have examined the applicability of Order I Rule 3 CPC in a situation like the present, namely, where one of the causes of action – in relation to one set of defendants, relates to the subject matter/ property situated outside the territorial jurisdiction of the Court. The decisions relied upon by the plaintiffs are decisions where either the defendants were situated within the jurisdiction of the same Court, or different causes of action arose within the jurisdiction of the same, the properties were situated within the jurisdiction of the same Court. Learned counsel submits that Order I Rule 3 CPC cannot be invoked where one or more of the parties, against whom relief is sought, is situated beyond territorial jurisdiction of the Court; the cause of

action has arisen beyond the territorial jurisdiction of the Court and; the subject matter of dispute, i.e. the property is situated beyond the territorial jurisdiction of the Court.

27. In support of his submissions, he has, firstly, placed reliance on ***Karam Singh & Others Vs. Kunwar Sen & Others***, AIR (29) 1942 All. 387. While dealing with Order II Rule 3 CPC, the Court, *inter alia*, observed:

*“... .. The provisions for the joinder of different causes of action against the same defendant or the same defendants are to be found in O. 2, R. 3. They allow a plaintiff, save as otherwise provided, to unite in the same suit several causes of action against the same defendant or the same defendants jointly. They are subject to the provisions of R. 6 which allow the Court to order separate trials where it appears that causes of action joined in one suit cannot be conveniently tried or disposed of together **and in my judgment, they are subject also to the condition that the Court has jurisdiction in respect of all the causes of action involved.** It is manifest that the Code of Civil Procedure was framed in its present form, namely, in the form of an Act with schedules attached so as to give greater elasticity to the rules of procedure. The main body of the Act sets forth the fundamental principles which are variable only by the Legislature itself. The rules in Sch. 1 deal with matters of detail which are variable at the instance of the various High Courts with the previous approval of certain other authorities. It is specifically laid down that variations in the rules shall not be inconsistent with the body of the Code and it seems to me that it is a reasonable inference that the Legislature when it first made the rules in Sch. 1 intended that those rules should themselves not be inconsistent with the body of the Code. **It follows that no rule in the schedule can confer upon any Court a jurisdiction which it would not have under the provisions in the body of the Code which confer such***

jurisdiction. The provisions of O. 1, R. 3 of Sch. 1 are that:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.”

*4. It has been suggested that this rule enables a plaintiff, as of right, to join various causes of action against different defendants in the same suit. I doubt whether that was the intention. In the first place, O. 1 contains no provision corresponding with that in O. 2, R. 6 and consequently, if the contention was right, no Court would have any power to prevent any inconvenience which might arise out of a joint trial. In the second place, **in order that the provisions of the rule should be applicable it is necessary that the right to relief should arise out of the same act or transaction or series of acts or transactions and this implies, in my judgment, that the acts or transactions, where they are different, should be connected as to constitute a single series which could fairly be described as one entity or fact which would constitute a cause of action against all the defendants jointly.** Whether this necessary condition exists in any particular case would, of course, depend upon the nature of the case but I am satisfied that this at least is necessary that the case should be such that it could be said that the Court in which the suit was instituted had local jurisdiction in the first instance to deal with the controversies arising between the plaintiffs and each of the defendants. This proposition is supported by the decision of the learned judges of the Calcutta High Court in 49 Cal. 835 [(‘22) 9 A.I.R. 1922 Cal. 500 : 70 I.C. 229 : 49 Cal. 895 : 27 C.W.N. 82, B. & N.W. By. Co. Ltd. v. Sadaram Bhairoran.]*

*5. In this connection it is necessary to consider the provisions of Section 17 of the CPC. **In suits which arise out of disputes about immovable property the jurisdictions of Courts depend***

upon the situation of the property itself. A difficulty would naturally arise if there was a dispute about some immovable property which was situated partly within one jurisdiction and partly within another. The provisions of S. 17 are, in my judgment, intended to solve this difficulty, but before the provisions come into play there must be one property which is situated in different jurisdictions. The property must, in the particular circumstances of the suit, be capable of being described as a single entity. Whether it can or cannot be so described will depend again upon the nature of the dispute between the parties. If there is a dispute, for instance about a single estate which both parties are claiming as a whole that estate is obviously for the purposes of that particular suit a single entity. If, on the other hand, the owner of an estate has a claim against unconnected trespassers who have trespassed upon different parts of the estate or different properties situated within it, those parts or those properties would not for the purposes of the dispute between him and the trespassers be one entity but several entities and the provisions of S. 17, would not apply.”

(Emphasis supplied)

28. While dealing with the facts of that case, the Court observed:

“... .. The only connecting link is that the plaintiffs' claim in both the properties arose at the time of the death of Prem Devi and that the claim is based on the assumption that the defendants are in possession as the result of transfers made by limited owners who were entitled, during their lives, to the enjoyment of the whole estate and the properties comprised within it. It was held many years ago in 1 Agra H.C.R. 109 [(‘67) 1 Agra H.C.R. 109 (F.B.), Mt. Jehan Bebee v. Saivuk Ram.] that unconnected transfers by a Hindu widow of properties comprised within the husband's estate did not give rise to one cause of action against the various transferees. The same rule was laid down in 17 A.L.J. 658 [(‘19) 6 A.I.R. 1919 All. 270 : 50 I.C. 905 : 41 All. 583 : 17 A.L.J. 658, Bindo Bibi v. Ram Chandra.] In that case a reference was made to the

decision in 16 All. 165 [(‘94) 16 All. 165 : 1894 A.W.N. 65 (F.B.), Murti v. Bhola Ram.] and it was pointed out that was a case where a claim was made against one defendant who had taken possession of different properties in execution of one decree... ..”

(Emphasis supplied)

29. The Court speaking through Allsop, J. further observed:

*“... ..In 45 Cal. 111 [(‘18) 5 A.I.R. 1918 Cal. 858 : 41 I.C. 944 : 45 Cal. 111 : 27 C.L.J. 158 : 21 C.W.N. 794, Ramendra Nath v. Brojendra Nath.] **there was apparently no question of local jurisdiction involved and one of the learned Judges was a party to the subsequent case of 49 Cal. 895 [(‘22) 9 A.I.R. 1922 Cal. 500 : 70 I.C. 229 : 49 Cal. 895 : 27 C.W.N. 82, B. & N.W. By. Co. Ltd. v. Sadaram Bhairadan.] where it was distinctly held that the provisions of O. 1, R. 3 could not confer local jurisdiction upon a Court which would not otherwise have it. I am satisfied that the Court at Saharanpur has jurisdiction only to deal with the dispute about the Hardwar property and that the Court at Amritsar has jurisdiction only to deal with the dispute about the Amritsar property. In these circumstances, the provisions of Section 22 of the CPC do not apply and I would, therefore, dismiss the application.**”*

(Emphasis supplied)

30. In the concurrent view rendered by Verma, J., the learned Judge observed:

“I agree. Suppose a sonless Hindu dies possessed of immovable property scattered all over India at Karachi, Peshwar, Lahore, Allahabad, Patna, Dacca, Shillong, Calcutta, Madras and. Bombay and is succeeded by his widow who, in the course of 40 or 50 years, transfers on different dates, portions of the property situated at each of the places mentioned above, to

different persons each of whom resides at the place where the property transferred to him is situated, and the transfers are wholly unconnected with, and independent of, one another. Upon the widow's death the reversioner wants to challenge these various transfers. Learned counsel for the plaintiffs has argued that in such a case the reversioner is entitled to bring one suit challenging all the transfers at any one of the places mentioned above, impleading all the transferees. I find it very difficult to hold that such a result is contemplated by the provisions of the Code of Civil Procedure upon which reliance has been placed and which are mentioned in the judgment of my learned brother. I do not consider it necessary, to pursue the matter any further. It is clear to my mind that, the plaintiffs' argument mentioned above is accepted, startling results will follow."

31. Reliance is also placed by learned counsel for the defendant No.3/ applicant on ***Anukul Chandra Chakravarty Vs. Province of Bengal, Pabna Collectorate and Others***, AIR (34) 1947 Calcutta 374. In this decision after taking note of Order I Rule 3, Order I Rule 5 and Order II Rule 3 CPC, the learned Judge observed as follows:

*"15. From these rules it appears that there may in one suit be a number of Defendants; and a diversity of reliefs may be claimed; and some of the Defendants will not necessarily be interested as to all the relief claimed in the suit. **But there must at the same time be some nexus, and what is required in that respect has been specified there must be one act or transaction or one series of acts or transactions in respect of or arising out of which the right to relief against the several Defendants is alleged to exist. There must also be present the further circumstance that if separate suits were brought against the Defendants some common question of law or fact would arise.***

16. *It is now well settled that having regard to the provisions of Or. 1, r. 2 when common questions of law and fact are*

*involved, a suit impleading several Defendants will not be multifarious only because the Plaintiff's causes of action against the several Defendants he has joined, are different. See Harendra Nath Singha Roy v. Purna Chandra Goswami [I.L.R. 55 Cal. 164 (1927).] . The same case has emphasised that **the essential enquiries are whether there is one act or transaction (or one series of acts or transactions) which gives rise to the Plaintiff's right to relief, and whether if the case against the several Defendants is considered individually, a common question of law or fact arises; if these incidents are found then the Defendants and causes of action can be joined in one suit.** In the same case at p. 171, Mukherjea, J., has cited the decision of the Court of Appeal in England, in *Payne v. British Time Recorder Co.* [[1921] 2 K.B. 1.] , where the provisions of Rules 1 and 4 of Order 16 of the English Rules and Orders were considered, and has approved as a good working rule the principle there laid down that*

“broadly speaking, where claims by or against different parties involve or may involve a common question of law or fact bearing sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matters should be disposed of at the same time the Court will allow, the joinder of Plaintiffs or Defendants subject to its discretion as to how the action should be tried.”

17. In our view, averments of collusion apart, the Plaintiff's case in the suit we are concerned with does not disclose any one transaction or series of transactions out of which his claim to relief arises, nor any common question of law or fact of sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matter should be disposed of at the same time. In effect the relief claimed by the Plaintiff is a declaration of title and possession of the southern area against Group I Defendants; of the northern area against Group II; and of the western area against Group III or Kumar Birendra Roy as the case may be. The detention

of these areas by the Defendants respectively are the acts out of which it is alleged the Plaintiff's right to relief arises. There appears to us to be no disclosed link or nexus between this activity of the three several groups of Defendants which will justify its description as one act or all part of one series of acts. Nor does there appear to us to be in this case any common question of law or fact of such importance so as to bring the case within the "working rule" referred to by Mukherjea, J., and quoted above. The area claimed is a large one, and it is not obvious, for example, that the same considerations will apply in determining the question whether the southern, northern and western portions respectively of the land claimed by the Plaintiff appertain to one or other of his two Mouzas. In the suit issues of limitation have been separately raised which if decided in favour of the Defendants will dispose of the suit whatever the Plaintiff's right would otherwise have been the question involved in determining these issues will not be common."

(Emphasis supplied)

32. Learned counsel for the defendants has also relied on ***Kurivalli Lingayya Setty Vs. Sitha Ram Agarwala & Another***, AIR 1955 Madras 595. In this decision, the Madras High Court observed:

"Order 1, R. 3 must be read along with the sections which confer jurisdiction on courts. Order 1 and O. 2 of the CPC are conceived in the interests of parties for the expeditious disposal of suits and for preventing multiplicity of proceedings. It is not intended to override the express provisions prescribing the limits of the courts' jurisdiction. It is, therefore, necessary that the said orders should be read consistently with the sections prescribing rules for jurisdiction. If so read, it follows that the rules provide for joinder of parties and clubbing different causes of action can only apply to the case of defendants residing within the jurisdiction of a particular court and in respect of causes of action arising within its jurisdiction."

(Emphasis supplied)

33. Lastly, reliance is placed on the decision of this Court in ***Wing Cdr. Megh Raj Gupta (Retd.) Vs. Wing Cdr. K.K. Gupta (Retd.) and Another***, 62 (1996) DLT 521. This Court, in this decision, observed as follows:

“5. The contention of learned Counsel for the plaintiff is that under the provisions of Order 2 Rule 1 CPC, the plaintiff has to frame suit in a manner so as to have the final decision upon all the subjects in disputes between the parties to prevent further litigation concerning them. The contention, therefore, is that as both the properties in Delhi as well as in Muradnagar are the subject matter of the disputes between the parties, the plaintiff is necessarily to seek relief in respect of such disputes and has, therefore, joined the causes of action in the present suit so as to seek relief for both the properties. His further contention is that under Section 17 of the Code of Civil Procedure, 1908, in case the relief in a particular suit is being sought in respect of two different properties, the plaintiff has a right to file a suit within the jurisdiction of a Court in which one of the such properties is situate. He, therefore, states that this Court has the jurisdiction to try the present suit.

6. With a view to attract the provision of Section 17 CPC, I feel it is necessary that the causes of action for filing the suit in respect of the two properties situated within the jurisdiction of two different Courts should be the same. In case, the causes of action are different, in my opinion, the plaintiff cannot file suit in respect of two properties in a Court which does not have jurisdiction to try the suit in respect of one of the properties. The plaintiff can take benefit of the provision of Section 17 CPC, in case, he is permitted by the provision of Order 1 Rule 3 CPC and Order 2 Rule 3 CPC to join such causes of action. In case, causes of action in respect of two properties cannot be joined, in my opinion, the suit cannot be tried in either of the Courts within whose jurisdiction one of the properties is not situate.”

(Emphasis supplied)

34. The first question that arises for my consideration is: whether in the face of the pleadings contained in the plaint, it could be said that the right to relief in respect of the property No.2 arose out of the same act or transaction or series of act or transactions, as alleged in respect of the right to relief qua property No.2.

35. I have consciously referred to, in detail, the averments of the plaintiffs as contained in the plaint, particularly, in relation to the impugned Sale Deed executed in favour of the defendant No.3/ applicant. The averments of the plaintiffs qua the alleged fraud, deceit, misrepresentation and undue influence attributed to defendant No.3 are completely lacking. Order VI Rule 4 CPC obliges a party in all cases in which he pleads misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all cases in which particulars may be necessary beyond such as are exemplified in the facts contained in the CPC, particulars with dates and items, if necessary, to be stated in the pleadings. Thus, the plaintiffs were obliged to clearly aver as to how and when defendant No.3 resorted to any kind of misrepresentation, fraud, breach of trust, wilful default or undue influence, or the like, upon late Ms. Kanta Mehra. The plaint is blissfully silent on these aspects, particularly qua defendant No.3, who admittedly is a stranger/ purchaser of property No.2 from its owner Ms. Kanta Mehra during her lifetime for consideration disclosed in the said Sale Deed. The plaintiffs have produced the Sale Deed executed by late Ms. Kanta Mehra in favour of the defendant No.3 in respect of property No.2. This sale deed shows that the same was executed and registered at Gurgaon; it pertains to a

property situated at Gurgaon and; the address of the defendant is also that of Gurgaon.

36. Even if one were to assume, on the basis of the pleadings made by the plaintiffs, that the plaintiffs have substantially averred with regard to the exercise of misrepresentation, fraud, breach of trust, wilful default or undue influence, or the like, upon late Ms. Kanta Mehra qua property No.1, it does not follow that the said conduct would automatically be attributed to defendant No.3/ applicant as well. All the averments regarding the ill-treatment meted out to Ms. Kanta Mehra are directed against the defendant Nos.1 & 2, and the Somnath family in general. The said allegations have not been made with particulars, qua defendant No.3. The plaintiffs would be obliged to independently establish the exercise of misrepresentation, fraud, breach of trust, wilful default or undue influence, or the like, in relation to each of the two transactions qua property No.1 and the property No.2, and in relation to the transaction pertaining to property No.2, such conduct would also have to be established against defendant No.3/ applicant. Therefore, I cannot agree with the submission of learned counsel for the plaintiffs that the series of acts or transactions culminating into the execution of the Gift Deed in respect of the property No.1, and Sale Deed in respect of the property No.2 are so connected as to constituted a single act, which could fairly be described as one community of facts which would constitute a cause of action against all the defendants jointly. The cause of action in respect of the impugned Gift Deed qua property No.1 arose when the said Gift Deed was executed on 30.11.2010, whereas, the cause of action in respect of the Sale Deed qua property No.2 arose when

the said Sale Deed was executed on 02.09.2010. The plaintiffs have not specified as to what role defendant No.3 had to play in the so-called act of misrepresentation, fraud or undue influence or the like, allegedly exercised upon late Ms. Kanta Mehra in the matter of execution of the impugned Sale Deed dated 02.09.2010 in respect of the property No.2, much less in the matter of execution of the impugned Will and the impugned Gift Deed qua property No.1. Thus, it cannot be said that if the plaintiffs were to bring two separate suits in respect of the property No.1 and the property No.2, common questions of law or fact would arise. This is because, the proof of exercise of misrepresentation, coercion and the undue influence, or the like, in respect of one transaction would not establish the existence of the same circumstances/ facts in relation to the other transaction, as the two transactions are separate in point of time and also involve different set of persons.

37. I also find merit in the submission of learned counsel for the defendant No.3/ applicant that Order I Rule 3 and Order I Rule 5 and Order II Rule 3 CPC cannot be invoked when, in respect of one of the causes of action, the Court has no territorial jurisdiction to try the suit.

38. I have already extracted hereinabove the observations made by the Allahabad High Court in ***Karam Singh*** (supra); the Calcutta High Court in ***Anukul Chandra Chakravarty*** (supra); by the Madras High Court in ***Kurivalli Lingayya Setty*** (supra); and of this Court in ***Wing Cdr. Megh Raj Gupta (Retd.)*** (supra). The plaintiffs could take benefit of provision of Section 17 CPC in case the plaintiffs were permitted by Order I Rule 3 CPC and Order II Rule 3 CPC to join the causes of action. Since, in my view,

the causes of action pertaining to gift of property No.2, and sale of property No.2, could not be joined in the same suit, defendants No.1 & 2 on the one hand, and defendant No.3 on the other hand, could not be joined in the same suit.

39. The decisions relied upon by the plaintiffs indeed do not bear out that they deal with cases where the causes of action arose within the jurisdiction of different Courts; the properties were situated within the jurisdiction of different Court, and; the defendants were residing within the jurisdiction of different Courts. Thus, the decisions relied upon by the plaintiffs, in my view, are of no avail in the facts of this case. The suit for recovery of immovable property or for determination of other right to, or interest in the immovable property “*shall be instituted in the Court within the local limits of whose jurisdiction the property is situate*”. The suit to seek relief in respect of the property No.2, therefore, could be filed only at Gurgaon.

40. In view of the aforesaid discussion, I am of the view that a reading of the plaint, firstly, does not disclose any cause of action against defendant No.3/ applicant, as the averments made in the plaint qua defendant No.3 are devoid of particulars, and the averments do not comply with Order VI Rule 4 CPC. Secondly, the plaintiffs are not entitled to invoke either Order I Rule 3 CPC read with Order I Rule 5 CPC or Order II Rule 3 CPC in the facts & circumstances of the case and thus, this Court lacks territorial jurisdiction to grant relief to the plaintiffs in respect of the property No.2.

41. For the aforesaid reasons, the present application of defendant No.3/ applicant is allowed and in respect of the reliefs sought by the plaintiffs qua

property No.2 against defendant No.3, the plaint is rejected. Defendant No.3 is deleted from the array of parties.

42. The application stands disposed of. The applicant/ defendant No.3 shall be entitled to costs of Rs.25,000/-. The plaintiffs shall pay the same to defendant No.3/ applicant within two weeks.

CS(OS) 199/2015

43. By the aforesaid order passed in I.A. No.23810/2015, the plaint had been rejected under Order VII Rule 11 CPC in respect of the relief sought by the plaintiffs qua property No.2, i.e. Plot No. 559, Block A, Palam Vihar, Village Chauma, Gurgaon, Haryana. The suit survives only in respect of the property No.1, which is C-4/8, Safdarjung Development Area, New Delhi. The plaintiff has valued the relief of possession in respect of the said property at Rs.1,61,71,711/-, which is below Rs.2 Crores.

44. In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge (South), Saket Courts for further proceedings before the competent court on 03.05.2016.

VIPIN SANGHI, J

FEBRUARY 25, 2016

sl /B.S. Rohella