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

+ **CS(OS) 265/2019**

YOGESH BHARDWAJ Plaintiff

Through: Mr. Arsh Bhalla, Advocate.

versus

RAM CHANDER & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **17.05.2019**

I.A. 7284/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CS(OS) 265/2019 & I.A. 7283/2019

2. The Plaintiff by way of present suit seeks partition, declaration and permanent injunction in respect of House No. B-40/1, Street No. 12, New Govind Pura, Delhi 110051 (hereinafter 'suit property').

Parties to the present suit/relationship

3. Plaintiff is the son of Defendant No. 1 (father) and Defendant No. 2 (mother), Defendant No. 3 is Plaintiff's real Aunt (sister of Plaintiff's father/Defendant No.1), Defendant No. 4 and 5 are the Elder Brother and Sister-in-Law respectively. Defendant No. 6 is Plaintiff's Real Sister.

4. In the suit, the Plaintiff has sought the following reliefs:-

“A. Pass a Decree of Peaceful Partition of the suit property area for House Number B-40/1, Street No. 12, New Gobind Pura, Delhi - 110051 more specifically shown in the Site Map of the Plaintiff; and

B. To pass a decree in favor of the Plaintiff and against the Defendant No. 1 thereby cancelling the Invalid Agreement to Sell, Cash Receipt, Possession Letter, False Affidavit dated 14.02.2011 executed between the Plaintiff's Grandmother and Defendant No. 1;

C. To pass a decree in favor of the Plaintiff and against the Defendants No. 4 and 5 thereby cancelling the Gift Deed dated 04.01.2016 executed between Defendant No.1 and Defendant No. 4 and 5;

D. To pass a decree in favor of the Plaintiff and against the Defendant No. 5 thereby cancelling the Gift Deed Dated 02.06.2017 executed between Defendant No. 1 and Defendant No. 5;

E. To pass a decree in favor of the Plaintiff and against the Defendant No. 6 thereby cancelling the Gift Deeds dated 08.03.2019 executed between the Defendant No. 1 and Defendant No. 6;

F. To pass a decree in favor of the Plaintiff and against the Defendant No. 6 thereby restraining the Defendant No. 6 their heirs, agents, attorneys, servants, successors, representatives, assignees, nominees or any other person acting on behalf of the Defendants No. 6 from selling, transferring, letting, mortgaging, alienating, gifting, parting with possession (in full/part) or creating 3rd party interest of whatsoever nature and causing damage in respect of 2nd Floor of the suit property Bearing House Number B-40/1, Street No. 12,. New Gobind Pura, Delhi - 110051 more specifically shown in the Schedule to the Plaintiff;

G. To pass a decree of permanent injunction in favor of the Plaintiff and against the Defendants No. 1, 2, 4, 5 and 6 thereby restraining the Defendants, their heirs, agents, attorneys, servants, successors, representatives, assignees, nominees of any other person acting on behalf of the Defendants No. 1, 2, 4, 5 and 6 from selling, transferring, letting, mortgaging, alienating, gifting, parting with possession (in full/part) or creating party interest of whatsoever nature and causing damage in respect of suit property Bearing House Number B-40/1, Street No. 12, New Gobind Pura, Delhi - 110051 more specifically shown in the Schedule to the Plaint; and

H. Pass any other or further relief which this Hon'ble Court deem fit and proper in the facts and circumstances of the case in favor of the Plaintiff and against the Defendants No. 1, 2, 3, 4, 5 and 6 in the interest of justice.”

Brief facts

5. The suit property was purchased in the year 1959 by Plaintiff's grandmother-Late Smt. Krishna Devi.

6. Smt. Krishna Devi expired on 25th March 2011 and after her death, Defendant No. 3 (Daughter) relinquished her share in the suit property in favour of Defendant No. 1 (son of Smt. Krishna Devi), by way of registered relinquishment deed dated 15th December 2011.

7. Defendant No. 1 has executed gift deed in respect of various portions of the suit property as follows:-

- a) Gift Deed dated 2nd June 2017 in respect of third floor along with roof rights of the suit property in favour of Defendant No.5.
- b) Gift Deed dated 4th January 2016 executed between Defendant No.1 and

Defendant No. 4 and 5.

c) Gift Deed dated 8th March 2019 executed between the Defendant No.1 and Defendant No. 6

Case of the Plaintiff

8. The case of the Plaintiff is that Defendant No. 1 has fraudulently acquired the said property from his mother by way of Agreement to Sell dated 14th February 2011. The Agreement to Sell is invalid and its execution amounts to 'fraud' committed by Defendant No. 1 on his mother (grandmother of the Plaintiff).

9. The suit property is an ancestral property. The Agreement to Sell dated 14th February 2011 was executed in connivance with Defendant Nos. 2 and 4 who have witnessed the same. The Agreement to Sell was registered one month prior to the death of Plaintiff's grandmother when she was bed ridden and was unconscious most of the time. Her thumb impression on the said document lacks legal sanctity. The Agreement to Sell and other documents such as affidavits, possession letter have no legal effect. After the death of Plaintiff's grandmother, Defendant Nos. 1, 2, 4, 5 and 6 connived and got Defendant No. 3 to execute a relinquishment deed in favour of the Plaintiff. Defendants have further connived to cheat the Plaintiff and in furtherance thereof Defendant No. 1 has illegally and unlawfully executed the Gift Deeds in respect of the suit property in favour of Defendant Nos. 4, 5 and 6. Plaintiff has issued legal notices asking the Defendants not to execute the Gift Deeds and to maintain status quo in respect of the suit property, however, they have refused acknowledge the notices. Defendant Nos.

1,2,4,5 and 6 have a malafide intent to grab the property of Plaintiff's grandmother. Defendant Nos. 1 and 2 have not handed over Plaintiff's share in the suit property and same is under illegal ownership of Defendant No. 6 and thus Plaintiff is entitled to partition of the suit property

The relevant averments made in the Plaint pertaining to the cause of action are as under:-

“18. That the cause of action for filing the present suit arose in favor of Plaintiff and against the Defendants when the Defendant No. 1 executed the Invalid Agreement to sell Dated 14.02.2019 with Plaintiff's grandmother in connivance with Defendants No. 2, 4, 6 and Notary Official. The cause of action further arose in favor of Plaintiff and against the Defendants on 02.06.2017 when the Gift Deed was executed by Defendant No. 1 in favor of Defendant No. 5 for third floor along with roof rights which was not In the knowledge of Plaintiff. The cause of action further arose when the copies of Invalid Agreement to sell, Cash Receipt, False Affidavit and Possession Letter were handed over to Plaintiff by Defendant No. 1 in the Month of March 2019. The cause of action further arose on 05.04.2019 when Legal Notice was served to the above mentioned defendants. The cause of action further arose on 06.04.2019 when Defendants No. 1, 2 and 6 accepted the copies of Legal Notices sent through Registered Courier. The cause of action further arose on the same day when Defendants No. 4 and 5 refused to accept the copies of Legal Notices dated 05.04.2019 sent through Registered Courier. The cause of action further arose on 12.04.2019 when the Defendants No. 1, 2, 4, 5 and 6 refused to accept the copies of Legal Notice dated 05.04.2019 sent through Registered Speed Post. That the cause of action further arose on 26.04.2019 when the Plaintiff received the Certified copies of the Portions (Floors) wherein it was revealed that all the above said portions have been inadvertently distributed by Defendant No. 1 without being a lawful owner to Defendants No. 4, 5 and 6. The cause of action further arose when the Defendant No. 1 and 4 threatened the

Plaintiff to refrain from taking any further action in respect of the suit property. The cause of action is still continuing & subsisting as Defendants No. 1, 2, 4, 5 and 6 are adamant to fulfill their modus operandi and had neither handed over the complete possession of the suit property nor cancelled the Gift Deeds executed by them in their personal capacity in favor of Defendants No. 4, 5 and 6.”

Whether the Plaintiff discloses a cause of action to file the present suit?

10. The basis of seeking partition of the suit property is that Defendant No.1 has unlawfully acquired the suit property pursuant to the Agreement to Sell and the other ancillary documents dated 14th February 2011 executed by Plaintiff's grandmother in favour of Defendant No.1. Relief has also been sought for cancelling the Gift Deed(s) executed by Defendant No. 1.

11. First and foremost it is important to analyse whether the Plaintiff has any right, title or interest in the suit property. In para 3 of the Plaint, Plaintiff admits that the suit property was purchased in the year 1959 by his grandmother. Thus, it is not in dispute that the suit property was the self acquired property of Smt. Krishna Devi. Plaintiff is certainly not a Class I legal heir of his grandmother. Therefore, after the demise of Krishna Devi, the suit property devolved on Defendant Nos. 1 and 3 (her son and daughter). The Plaintiff does not have the right of inheritance by succession in the suit property and therefore has no share therein. In absence of any legal share in the property, the Plaintiff has no *locus standi* to seek partition of the suit property. The present suit is liable to be dismissed on this short ground alone. However, there are several other reasons for coming to this conclusion, discussed hereinafter.

12. The Plaintiff has made a bald averment in para 4 of the Plaint that the suit property is an ancestral property. This contention is not supported by the necessary pleadings or any documents. Pertinently, the statement made in para 4 contradicts the averment made in para 3 of the Plaint. The law relating to ancestral/HUF properties is now well settled and this Court in several decisions including **Jagdish Singhal and Ors. v. Ram Bhaj Bansal and Ors** **MANU/DE/1139/2017** has explained as to how a property would constitute to be part of HUF and the requirement under law for pleading and proving such a claim. The plaint is abysmally lacking in this regard. Infact the plea of ancestral property is a casual statement without any substance. Thus, it emerges that the Plaintiff has no right, title or interest in the suit property. In absence of any vested legal right, the Plaintiff cannot have any cause of action against his father and sister of his father (Defendant No. 3).

13. It is also significant to note that the Plaintiff has not sought any relief of declaration challenging the ownership of Defendant No. 1 in respect to the suit property. The relinquishment deed dated 15th December 2011 executed by Defendant No. 3 has also not been challenged in the present suit. Thus there is no challenge to the title of Defendant No. 1. Consequently, Plaintiff has no legal right to challenge the Gift Deeds executed by Defendant No. 1 in favour of Defendant Nos. 4, 5 and 6.

14. The Plaintiff's main ground of challenge is centred around the Agreement to Sell dated 14th February 2011 executed by Smt. Krishna Devi in favour of Defendant No. 1. Since the Plaintiff does not have any share in

the suit property and is also not party to the Agreement To Sell, he has no right to challenge the Agreement to Sell dated 14th February 2011. Notwithstanding the absence of legal right to challenge the title of Defendant No.1, it is noteworthy that the title of Defendant No.1 is not based on the Agreement to Sell. Defendant No. 1 has become the owner by succession and the Relinquishment Deed executed by Defendant No. 3 in favour of Defendant No. 1. The Gift Deeds executed by Defendant No. 1 are subsequent to the death of Smt. Krishna Devi and after the execution of the Relinquishment Deed dated 15th December 2011. The recital in the Gift Deeds, also state that Defendant No. 1 has acquired the ownership of the property by virtue of the Relinquishment Deed dated 15th December 2011. The Agreement to Sell therefore is inconsequential to the title of Defendant No. 1. Even if such documents were executed and were not lawful, there is no ground to say that a fraud has been committed on Smt. Krishna Devi or on the Plaintiff.

15. There is no dispute about the legal proposition that the Court is not only empowered but under an obligation to reject the plaint, even without any application from a party, if the same is hit by any of the clauses mentioned under rule 11 of Order VII, C.P.C. The plaint herein does not disclose any cause of action to seek the reliefs sought in the present suit. In **T. Arivandandam v. T.V Satyapal and Ors. AIR 1970 SC 2421**, while dealing with the suit pending before the First Munsif's Court, Bangalore the Supreme Court held that on a meaningful, not formal reading of the plaint, the suit was manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, thus the Court should exercise it's power under Order VII Rule

11 CPC, taking care to see that the grounds mentioned therein is fulfilled. It was held that if clever drafting has created the illusion of a cause of action, it should be nipped in the bud, at the first hearing by examining the party searchingly under chapter X CPC. The Trial Court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot-down at the earliest stage. Again, in **ITC Ltd. v. Debts Recovery Appellate Tribunal (1998) 2 SCC 70**, it was held that the basic question to be decided in dealing with an application filed by the Defendant under Order 7 Rule 11 of the Code is to discern if a real cause of action has been set out in the plaint or something illusory has been projected, to get out of the said provision. Though summons in the suit have not been issued as yet, but on a plain reading of the plaint, the Court does not find any cause of action in favour of the Plaintiff to seek the reliefs sought for. The suit is vexatious, meritless and deserves to be rejected at the threshold. For the foregoing reasons, the Plaint is rejected under Order VII Rule 11 CPC.

16. In view of the above, the pending application is dismissed.

SANJEEV NARULA, J

MAY 17, 2019

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