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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 140/2020 and CM APPL. 4674/2020, 4675/2020**

RAJESH GUPTA

..... Petitioner

Through: Mr. Parag Chahal, Advocate with
Petitioner in person (M:
9873181949).

versus

RAM KISHAN GUPTA

..... Respondent

Through: Mr. Vikas Agarwal, Advocate (M:
9811165656).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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05.02.2020

1. The present petition has been filed challenging the impugned order dated 21st October, 2019 by which the application under Order I Rule 10 CPC read with Order VI Rule 17 CPC filed by the Respondent-Plaintiff (*hereinafter*, “*Plaintiff*”) has been allowed by the Trial Court. The background of the case is that the Plaintiff, Mr. Ram Kishan Gupta filed a suit for mandatory injunction against his son Mr. Rajesh Gupta, the Petitioner/Defendant (*hereinafter*, “*Defendant*”) seeking removal of the Defendant from property bearing No. E-103 (Back Side) Second Floor, Kamla Nagar New Delhi -110007.

2. Written statement was filed by the Defendant initially. Thereafter, the Plaintiff moved an application under Order I Rule 10 CPC read with Order VI Rule 17 CPC on the strength of a gift deed, which was allegedly executed by him in favour of his daughter, Mrs. Renu Singhal. According to the said application, the Plaintiff sought to amend the plaint by impleading Ms. Renu Singhal and also adding averments in respect of the alleged gift deed dated

23rd October, 2018 stated to have been executed by him in favour of his daughter. The said application was heard by the Trial Court and was allowed by the impugned order. Since the order has been passed, the Defendant has also filed his amended written statement and in the written statement, has taken a plea that the Plaintiff had no right to transfer the property to his daughter.

3. Ld. counsel for the Defendant submits that the impleadment of Ms. Renu Singhal as Plaintiff No. 2 is contrary to Section 52 of the Transfer of Property Act, 1882 as there was a suit, which was pending wherein the right of the Plaintiff to the impugned property itself is in question and thus, no transfer could have been effected during the pendency of the suit.

4. On the other hand, ld. counsel for the Plaintiff submits that there are various irregularities/deficiencies in the present petition. It is submitted that the Defendant has failed to disclose that after the amendment was allowed, the Defendant has in fact filed the amended written statement, which has been taken on record by the Trial Court on 29th January, 2020. Further, he submits that Mrs. Renu Singhal has not even been made a party to the present petition. It is argued on behalf of the Plaintiff that the gift deed is not under challenge in the present proceedings and thus, there is no infirmity in the impugned order.

5. Having heard ld. counsels for the parties and perusing the pleadings on record, the amended written statement filed on behalf of the Defendant and order dated 29th January, 2020 it is clear after the passing of the impugned order, the Defendant has already filed the amended written statement. The said fact was not brought to the notice of this Court in the present petition. Further, Mrs. Renu Singhal has also not been made a party

in the present petition which is a fundamental defect as she has been impleaded as Plaintiff No. 2 by the impugned order. Even on merits, the only stand of the Defendant is that the Plaintiff No. 1 did not have any right to transfer the property by gift deed to Ms. Renu Singhal.

6. The Court does not find any infirmity in the impleadment of Mrs. Renu Singhal, who has been allegedly gifted the property in question vide a gift deed dated 23rd October, 2018. She clearly has an interest in the property and would be a necessary party. The question as to whether the property has been rightly gifted to her is not to be gone into at the stage of impleadment. Her impleadment and the consequential amendments in the Plaint have been rightly permitted by the trial court and the same is not liable to be interfered with. The amended written statement has already been filed on record by the Defendant. It is made clear that this Court has not rendered any opinion in respect of the validity or genuinity of the gift deed.

7. With these observations, the present petition with all pending applications is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 05, 2020
MR