



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

% **Date of Decision : 30th August, 2022**

+ **CS(OS) 243/2020 & I.A. 13847/2022 (O-XI R-14 & 15 of CPC)**

SANGEETA SEHGAL & ORS. Plaintiffs
Through: Mr. Rishi Raj Sharma, Advocate.

versus

GAUTAM DEV SOOD & ORS. Defendants
Through: Mr. Ashok Chhabra, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

CS(OS) 243/2020 & I.A. 12412/2021(of the defendant u/O-VII R-11 of CPC)

1. By this judgment, I shall dispose of the application filed on behalf of the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of plaint filed on behalf of the defendant.
2. The present suit has been filed on behalf of the three plaintiffs, who are sisters, seeking partition of the property bearing no. N-32, Greater Kailash-1, New Delhi ('suit property'). Defendant no.1 is the brother of the plaintiffs and the defendants no.2, 3 and 4 are the legal heirs of another brother of the plaintiffs.
3. Notice in this application was issued on 23rd September, 2021 and reply has been filed on behalf of the plaintiff no.2.
4. The present application is essentially premised on the following two grounds:



- a) The mother of the parties, late Smt. Raj Kumari Sood, was the owner of the suit property vide registered sale deed dated 27th April, 1965 and she had, in her lifetime executed two gift deeds dated 13th March, 2000 and 11th March, 2002 in favour of her two sons, defendant no.1 and the late husband of the defendant no.2. The defendants in the present suit have simplicitor sought relief of partition without challenging or seeking cancellation of the aforesaid two registered gift deeds. Reliance is being placed on various judgments in support of this submission.
- b) The suit is time barred in terms of Article 59 of the Limitation Act, 1963, as the plaintiffs were aware of the aforesaid gift deeds in the year 2009, yet the present suit has been filed only in the year 2020. Reliance is being placed on various judgments in support of this submission.
5. Counsel for the plaintiffs has relied upon paragraphs 1 and 3 of the plaint to contend that the real owner of the suit property was the father of the plaintiffs, late Dr. Vyas Dev Sood and the property was purchased and constructed upon by his funds. He further contends that the mother of the plaintiffs and the defendant no.1 was only a Benami owner of the said property and therefore, the mother could not have executed the aforesaid gift deeds. Therefore, the aforesaid gift deeds are void and he has placed reliance on the judgment of the Supreme Court in ***Kewal Krishan v. Rajesh Kumar***, 2021 SCC OnLine SC 1097, to contend that a document which is void need not be challenged by seeking a declaration as the said plea can be set up and proved even in collateral proceedings. He further submits that the issue as to who is the real owner of the suit property is a triable issue and therefore, the



plaint cannot be rejected under provisions of Order VII Rule 11 of the CPC.

6. I have heard the counsels for the parties.

7. First, I propose to refer to the judgments relied upon by the defendants.

8. In *Anita Anand v. Gargi Kapur*, 2018 SCC OnLine Del 11372, a Coordinate Bench of this Court has observed that where a gift deed has been executed in favour of the defendant, the plaintiff shall not be entitled for partition till the plaintiff challenges the gift deed. Relief of partition would be consequential to the declaration of the gift deed as illegal. Therefore, till the time the gift deed stands, relief of partition cannot be granted.

9. In *Ramti Devi v. Union of India*, (1995) 1 SCC 198, the Supreme Court has held that until a validly executed and registered document is cancelled by proper declaration by the Court, the said document remains valid and binds the parties. Pleading to this effect, by itself, is not sufficient.

10. Admittedly, the present suit is for seeking relief of partition simplicitor. The suit does not seek any relief in respect of cancellation of the gift deeds. Even if the plaintiffs have questioned the authenticity and existence of the gift deeds or that the mother of the plaintiffs did not have the right to gift the suit property, the same could have been done by seeking a declaration of cancellation of the said gift deeds. Till the time, the said gift deeds are declared to be void or unlawful by the Court, they remain valid and are binding on the parties.

11. The judgment relied upon by the plaintiffs in *Kewal Krishan* (supra) would not be of any assistance to plaintiffs, as in the said case prayers for declaration in respect of the sale deeds were made in the amended plaint.

12. As regards the plea of limitation, counsel for the defendants has



relied upon Article 59 of the Limitation Act, which prescribes the period of limitation for filing a suit to cancel an instrument or decree, which is set out below:

<i>“Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>59. To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years</i>	<i>When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him”</i>

13. In ***Abdul Rahim v. Sk. Abdul Zabbar***, (2009) 6 SCC 160, the Supreme Court in the context of challenge to a registered gift deed, observed that limitation for challenging the validity of gift deed would be governed by Article 59 of the Schedule to the Limitation Act and the period of limitation would begin from the date of knowledge of the fact.

14. A Division Bench of this Court in ***Sanjay Roy v. Sandeep Soni***, 2022 SCC OnLine Del 1525, following the judgment of the Supreme Court in ***Ramti Devi*** (supra) and relying upon Section 27 of the Limitation act, has observed that in the absence of any challenge to a registered conveyance deed in favour of a party within the prescribed period of limitation under Article 59 of the Limitation Act, absolute ownership rights in the property would vest in that party.

15. Specific averments have been made in para 17 of the plaint that show that the plaintiffs had the knowledge of registered gift deeds in 2009 and the present suit has been filed only in the year 2020. Paragraph 17 of the plaint is set out below:

“17. That it is pertinent to submit that the Plaintiffs had previously in the year 2009 filed a suit for partition and rendition



of accounts against the Defendants before this Hon'ble Court being CS (OS) No. 1912 of 2009, wherein the pleadings were complete and the matter was fixed for hearing on 02-04-2013 for framing of issues. That in the written statement/s filed by the Defendants in the said suit, allegedly reliance was placed on two gift deeds dated March 2000 & March 2002 allegedly executed by the mother (Smt. Raj Kumari Sood) in favour of the brothers of Plaintiffs i.e. husband of Defendant No. 2 (first floor & above of the suit property) and also Defendant No. 1 (ground floor of the suit property), respectively. That in the replication filed by the Plaintiffs in the said suit, has denied the gift deed/s and raised pertinent questions regarding the authenticity, execution and existence thereof. That in any case since the suit property is itself benami and the true and correct owner was the father i.e. Late Dr. Vyas Dev Sood, the mother i.e. Late Smt. Raj Kumari Sood did not have any right to transfer the suit property partly or wholly or in any manner whatsoever, and accordingly any such transfer if so made would not bar or restrict or relinquish the legal rights of the Plaintiffs in the suit property."

16. In ***Dahiben v. Arvindbhai Kalyanji Bhanusali***, (2020) 7 SCC 366, the Supreme Court has observed that provisions of Order VII rule 11 of the CPC are mandatory in nature and if any of the grounds as stated in clauses (a) to (e) of Order VII Rule 11 of the CPC is made out, the Court is bound to reject the plaint. It was also observed that the plaint shall be liable to be rejected when from the averments in the plaint, the suit appears to be barred by any law or by limitation.

17. The legal principle that emerges from the aforesaid judgment is that the Court must scrutinize the averments made in the plaint along with the documents relied upon, to determine whether the suit is barred by limitation.

18. The plaintiffs have not sought relief of declaration of cancellation of



the two gift deeds executed in favour of the defendant no.1 and his deceased brother, the predecessor-in-interest of the defendants no.2, 3 and 4. Without the aforesaid relief, the relief of partition cannot be claimed. Further, the plaintiffs were aware of the aforesaid gift deeds in the year 2009 and the prescribed limitation period for challenging the same is long over. Therefore, applying the law laid down by the Supreme Court in ***Dahiben*** (supra), the present plaint is liable to be rejected under Order VII Rule 11 of the CPC.

19. Accordingly, the application of the defendant is allowed and the plaint is rejected in terms of Order VII Rule 11 of the CPC.

20. All pending applications stand disposed of.

AUGUST 30, 2022
at

(AMIT BANSAL)
JUDGE

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