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

Reserved on: 12th September, 2024
Date of Decision: 05th November, 2024

+ **CS(OS) 148/2023 & I.A. 8501/2024**

SUNITA RANGA

....Plaintiff

Through: **Ms. Manvi Roy, Advocate**

versus

VIJAYINDER KUMAR & ORS.

.....Defendants

Through: **Mr. Ashutosh Nagar, Mr. Kunal Taneja and Mr. Ishan Harlalka, Advocates. for D-1**
Mr. Vikramjeet Singh Ranga, Advocate for D-2 with D-2 in person

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 9482/2024 in CS(OS) 148/2023 (Application on behalf of defendant no. 1 under Order VII Rule 11 CPC for rejection of the plaint)

1. The present application has been filed by defendant no. 1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), seeking rejection of the plaint on the following grounds among others: (i) lack of cause of action; (ii) reliefs claimed in the plaint are undervalued; and (ii) insufficient court fee has been paid by the plaintiff.
2. The captioned suit has been filed for partition and injunction with respect to the property bearing no. M-111, Saket, New Delhi-110017 along



with its superstructure¹, standing on a plot of land admeasuring 167 sq. mts. ('suit property') owned by late Sh. Chander Bhan, who was the father of the parties herein.

3. The plaintiff has filed the suit for partition on the plea that late Sh. Chander Bhan died intestate on 05.02.2023. Plaintiff and defendant nos. 1 to 4 are children of late Sh. Chander Bhan and thus, his Class-I legal heirs as per Hindu Succession Act, 1956. Plaintiff claims 1/5th share in the suit property.

Arguments of applicant/defendant no.1 qua No Cause of Action and Non-payment of appropriate Court Fee

4. The applicant/defendant no. 1 contends that the present suit filed by the plaintiff seeking partition and injunction *qua* the suit property is without any cause of action as the suit property stood transferred in favour of the applicant/defendant no. 1, by late Sh. Chander Bhan vide registered Gift Deed dated 03.09.2021². Defendant no. 1 is the youngest son of late Sh. Chander Bhan.

4.1 It is stated that previously late Sh. Chander Bhan had also executed a registered Will dated 24.07.2017³ bequeathing the suit property in favour of applicant/defendant no. 1 exclusively. It is stated that the Gift Deed is consistent with the intention of the bequest in the Will.

4.2 It is stated that in view of the said registered document(s), the suit property did not form part of the estate of late Sh. Chander Bhan at the time of his death and is, therefore, not liable to be partitioned and the plaint is,

¹ Ground floor and first floor

² Registered with Registration No. 6445, in Book No.1 Vol No. 4055 before the Sub Registrar, SR VA Hauz Khas, New Delhi, on **06.09.2021**.

³ Registered with Registration No. 176 in Book No. 3, Vol. No. 555, before the Sub Registrar VII, New Delhi, on **26.07.2017**.



therefore, needs to be rejected under Order VII Rule 11(a) CPC as it is without any cause of action.

5. It is further stated that following the execution of the Gift Deed, which is subsequent in time, the suit property already stands mutated vide statutory authority's mutation letter dated 06.09.2021 in the name of defendant no. 1 and the electricity meter is also in the name of the applicant/defendant no. 1.

5.1 It is stated that the applicant/defendant no. 1 is in actual physical possession of the suit property and the same is under his lock and key.

5.2 It is stated that the plaintiff is not in possession of the suit property and has, therefore, failed to pay ad-valorem Court fee for the relief of partition and possession sought for in the plaint.

Arguments of non-applicant/plaintiff qua 'No Cause of Action' and 'Non-payment of appropriate Court Fee'

6. In reply, learned counsel for the non-applicant/plaintiff stated that the authenticity of the Gift Deed dated 03.09.2021 and the registered Will dated 24.07.2017 has been challenged by defendant no. 2 i.e., Subhash Chandra Jarodia in a separate suit CS(OS) 441/2023, which is pending adjudication before this Court.

6.1 She stated that the plaintiff does not admit the validity of the Gift Deed dated 03.09.2021 or the registered Will dated 24.07.2017. She stated that the plaintiff learnt about the said document(s) after the defendant no. 1 filed his written statement on 21.04.2023 and placed the said documents on record.

6.2 She stated that the plaintiff verily believes that the Gift Deed dated 03.09.2021 has not been executed by late Sh. Chander Bhan of his own free



will and the execution of the registered Will dated 24.07.2017 as well is shrouded by suspicious circumstances.

6.3 She stated that the suit property was purchased by late Sh. Chander Bhan with financial assistance of the plaintiff as well as defendant nos. 2 and 4. She stated that plaintiff is entitled to 1/5th share in the suit property and is in constructive possession of the suit property.

6.4 She stated that plaintiff has resided with her father i.e., late Sh. Chander Bhan in the suit property even after her marriage and, therefore, she has rightly paid a fixed court fees for the relief of partition and possession. She stated that plaintiff has filed on record several documents, which records the suit property as the address of the plaintiff in the said document.

Arguments of non-applicant/defendant no.2 qua No Cause of Action and Non-payment of appropriate Court Fee

7. Learned counsel for defendant no. 2 supported the submission of the plaintiff and stated that defendant no. 2 herein has also filed CS(OS) 441/2023 challenging the registered Gift Deed dated 03.09.2021 and registered Will dated 24.07.2017.

7.1 He stated that witnesses to the registered Will and the Gift Deed are persons known to defendant no. 1 herein. He, however, fairly stated that plaintiff herein was estranged from late Sh. Chander Bhan in the last few years and she had not even attended his last rites. He stated that the estrangement was on account of plaintiff's personal differences with defendant no. 1. He stated that plaintiff and defendant no. 1 had not had a cordial relationship in a long time.

7.2 He as well sought to contend that plaintiff, defendant no. 2 and defendant no. 4 had contributed towards the purchase of land and



construction thereof.

7.3 He however fairly admitted that defendant no. 2, who is a retired Government official did not declare any co-ownership rights in the suit property to its Department. He also admits that in his Income Tax Returns (ITR) defendant no. 2 did not declare his alleged co-ownership rights in the suit property.

7.4 He stated that defendant no. 2 was informed by late Shri Chander Bhan in January, 2023 that the Gift Deed dated 03.09.2021 has been executed by him under coercion from defendant no. 1. He, however, concedes that the said fact was not shared by him with the plaintiff herein and it is for this reason that the captioned plaint makes no mention of the Gift Deed dated 03.09.2021.

Rejoinder Arguments of the non-applicant/contesting defendant no. 1 to the arguments of defendant no.2

8. In reply, learned counsel for the non-applicant/defendant no. 1 stated that defendant no. 2 filed CS(OS) 441/2023 in July, 2023 on the plea that the Gift Deed dated 03.09.2021 was executed by late Sh. Chander Bhan under coercion.

8.1 He stated that defendant no. 1 filed his written statement in this suit on 11.04.2023 and duly disclosed the existence of registered Will dated 24.07.2017 and Gift Deed 03.09.2021 in the pleading and filed the document(s). He stated that the said pleading and the documents were duly served on defendant no. 2. He stated that it is thereafter as an afterthought that defendant no. 2 concocted the plea of coercion in his written statement filed subsequently on 21.04.2023 and filed the separate suit CS (OS) 441/2023 in July, 2023.



8.2 He stated that the falsity of the pleas of coercion is evident from the fact that though defendant no. 2 allegedly knew about the Gift Deed in January, 2023 he neither challenged the said deed nor informed the plaintiff or defendant nos. 3 and 4 with respect to the alleged coercion.

8.3 He stated that the plea of coercion and alleged conversation between defendant no. 2 and late Sh. Chander Bhan in January, 2023 in the hospital is a false plea raised to maintain the said suit and is without any truthful basis.

Analysis and findings

9. This Court has considered the submissions of the parties and perused the record.

10. The captioned suit for partition has been filed on the fundamental basis that the suit property was the personal property of late Shri Chander Bhan and since he has expired on 05.02.2023, the parties to the suit being his Class-I legal heirs of late Shri Chander Bhan are entitled to 1/5th undivided share each as per the law of succession. The relevant paragraphs of the plaint read as under:

“3. That the Late Shri Chander Bhan the father of the Plaintiff and Defendants, **who was the owner of the Suit Property** expired on 05.02.2023 leaving behind 5 children. It is pertinent to mention here that the wife of Late Shri Chander Bhan viz. Smt. Mishri Devi, expired on 26.11.2012.

...

16. The cause of action arose when the Plaintiff demanded portion of the suit property from her father and the Defendants on multiple occasions in 2021. The cause of action also arose when the Defendant No. 1 refused to accede to the request of the Plaintiff for partition of suit property. The cause of action lastly arose on 05.02.2023 when **father of the Plaintiff and Defendants, who was the real owner of the Suit Property**, expired. The cause of action is a subsisting and continuing one.”



(Emphasis supplied)

10.1 However, the defendant no. 1 has placed on record the registered Gift Deed dated 03.09.2021 and the registered Will dated 24.07.2017 executed by late Shri Chander Bhan transferring the suit property exclusively in favor of defendant no. 1. The existence of the said documents is not disputed by the plaintiff and the challenge to the said document is pending adjudication in a separate suit CS (OS) 441/2023 filed by defendant no.2 herein. In CS(OS) 441/2023, the plaintiff herein has been arrayed as defendant no. 4 in the said suit.

10.2 The present suit has thus been filed on the basic premise that the suit property formed part of the estate of late Shri Chander Bhan on the date of his death, however the said fundamental premise ceases to exist in view of the aforesaid registered Gift Deed and Will. However, in view of the Gift Deed, late Shri Chander Bhan ceased to have any right, title or interest in the suit property and his right, title and interest stood extinguished.

10.3 Thus, the present suit for partition and injunction qua the suit property at the behest of the plaintiff as Class-I legal heir of late Sh. Chander Bhan is without any cause of action and is thus liable to be rejected under Order VII Rule 11(a) CPC.

11. The counsel for the plaintiff had sought to orally contend that plaintiff intends to amend the present plaint to challenge the validity of the Gift Deed and the registered Will and, therefore, the hearing be adjourned to permit amendment.

12. In the considered opinion of this Court, the said submission of the plaintiff is without any merit. The written statement in this suit was filed by defendant no. 1 on 11.04.2023 along with the registered Gift Deed and the



registered Will. The plaintiff thus had knowledge of the existence of the said documents for over 1 ½ years and she has not taken any steps to amend the plaint. This matter was heard on several dates between 10.07.2024 and 12.09.2024 on this application filed under Order VII Rule 11 CPC. This Court is, therefore, of the view that any endeavour to amend the plaint at this stage is highly belated and without any merits. In any event, as noted above a separate suit i.e. CS (OS) 441/2023 challenging the Gift Deed and the Will is already pending and the plaintiff is a party-defendant therein. Multiplying suit proceedings for deciding the same issues does not serve any purpose.

13. In the plaint, a perusal of paragraph 8 of the plaint shows that the plaintiff was aware of the execution of the registered Will dated 24.07.2017 by late Sh. Chander Bhan in the year 2017 itself, however, the plaintiff failed to make a fair and full disclosure of the said document to this Court along with the plaint. The averments in paragraph 8 of the plaint in fact, indicate that the valid execution of the Will was to the knowledge of the plaintiff. The plaintiff, however, did not challenge the Will in the plaint filed on 21.02.2023. In view of the Will dated 24.07.2017 the assertion of the plaintiff in the suit at paragraph 4 that late Sh. Chander Bhan died intestate is incorrect to her knowledge. For this additional reason, the suit is without any cause of action. The relevant paragraph 8 of the plaint reads as under:

“8. It will not be out of place to mention that Late Shri Chander Bhan has prior to the aforementioned oral family settlement **made a will**, the contents of which are not known to the Plaintiff at this stage, **however, later he revoked the said will** by stating that all his belongings and properties shall be equally divided among all the children.”

(Emphasis supplied)

13.1 No documents evidencing the alleged revocation of the Will dated



24.07.2017 have been placed on record.

14. In the facts of this case, this Court is also satisfied that the plaintiff is neither in actual possession nor in constructive possession of the suit property. The suit property stood transferred and mutated in the favour of defendant no. 1 in the records of Municipal Corporation of Delhi ('MCD') on 06.09.2021.

14.1 Late Shri Chander Bhan died on 05.02.2023. The plaintiff has admittedly been estranged from late Shri Chander Bhan in the last few years of his life and thus the contention of the plaintiff that she is in actual possession of the suit property is incorrect. The counsel for the plaintiff during the hearing on 21.08.2024 fairly conceded that the plaintiff is not in the actual physical possession of the suit property.

14.2 Since the title stood transferred in favour of defendant no. 1 in 2021, the assertion of the plaintiff that she is in constructive possession of the suit property is also incorrect.

15. Therefore, the contention of the applicant/defendant no. 1 that the plaintiff has failed to pay ad-valorem Court fee on the relief for possession has merit. However, no direction is issued to the plaintiff to make good the deficiency in court fee as per the proviso to Order VII Rule 11(c) since the suit has been rejected under Order VII Rule 11(a) CPC.

16. In view of the findings that the suit property was not part of the estate of late Sh. Chander Bhan at the time of his death, the plaint seeking partition on the premise that suit property forms a part of the estate is without any cause of action and is hereby rejected under Order VII Rule 11(a) CPC.

17. In the plaint, the plaintiff has at paragraph 7 sought to vaguely aver that she contributed towards the sale consideration and construction along



with her siblings. The said averments are unsubstantiated with any documents and even otherwise the said averments are of no consequence as the plaintiff has not sought any declaration of independent ownership and has instead admitted that late Sh. Chander Bhan was the owner of the suit property. The said averments in the plaint are, therefore, inconsistent as also inconsequential as no relief has been sought on this basis.

17.1. In this regard, it would be relevant to refer to the interim order dated 03.03.2023. The interim order records the submission of the plaintiff that the suit property belonged to late Sh. Chander Bhan, who expired intestate on 05.02.2023. The submissions recorded in the interim order also show that the plaintiff is not canvassing any rights adverse to the absolute ownership rights of late Sh. Chander Bhan and, therefore, the averments made in paragraph '7' of the plaint are liable to be ignored. The said averments, therefore, do not give rise to any cause of action.

18. In view of the aforesaid findings and with the aforesaid observations, the present application is hereby allowed and the plaint is rejected under Order VII Rule 11(a) CPC.

19. It is, however, clarified that the rights and contentions of defendant no. 2 with respect to the grounds of challenge to the Gift Deed and the registered Will raised in CS(OS) 441/2023 have not been examined by this Court in this matter and the same shall be adjudicated in CS(OS) 441/2023 on its own merits.

I.A. 4263/2023 (under Order XXXIX Rules 1 and 2 CPC for grant of ad-interim ex-parte injunction)

I.A. 8501/2024 (under Order XXXIX Rule 4 CPC for setting aside the order dated 03.03.2023)



20. I.A. No. 4263/2023 is an application filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC seeking a restraint against defendant(s) from creating any third-party right or otherwise parting with possession of the suit property. This Court vide order dated 03.03.2023 passed an ex-parte ad-interim order directing the parties to maintain status quo with respect to the title and possession until further orders.

21. I.A. No. 8501/2024 is an application filed by defendant no. 1 under Order XXXIX Rule 4 CPC seeking vacation of the order dated 03.03.2023 on the pleas raised in I.A. No. 8501/2024.

22. In view of the rejection of the plaint, the ad-interim order dated 03.03.2023 is hereby vacated and these applications stand disposed of.

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23. The plaint stands rejected, in view of the orders passed in I.A. 9482/2024.

24. Pending applications are disposed of.

25. All future dates stand cancelled.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

NOVEMBER 05, 2024/rhc/sk/msh

Click here to check corrigendum, if any