



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **FAO(OS) 50/2023, CM APPL. 18426/2023, CM APPL. 18427/2023**
CM APPL. 18428/2023, CM APPL. 18429/2023

RAJEEV KUMAR & ANR. Appellant
 Through: **Mr. Anil Panwar and Mr. Tanishq**
Panwar, Advocates

versus

SANJEEV KUMAR & ORS. Respondent
 Through: **Ms. Smita Maan and Mr. Kartik**
Dabas, Advocates

%

Date of Decision: 04th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (O R A L)

1. This first appeal has been filed under Section 10 of the Delhi High Court Act, 1966, read with Section 96 of the Code of Civil Procedure, 1908 ('CPC'), impugning the order dated 02.03.2023 passed by the learned Single Judge of this Court in CS (OS) No. 416/2021, titled as '**Rajeev Kumar and Anr. v. Sanjeev Kumar and Ors.**', whereby the learned Single Judge framed the following preliminary issue:

Whether by virtue of registered Will dated 24.09.2015, the defendant no.3 became the sole and absolute owner of the suit property or derived only a lifetime interest therein?

2. The Appellants herein are the plaintiffs and the Respondents are the defendants.



3. The suit has been filed seeking a declaration, cancellation of gift deeds dated 26.02.2018 and 06.05.2019 executed by Respondent no.3 in favour of Respondent No.2 and injunction.

4. It is the stated case of the Appellants in the plaint that late Sh. Shadi Lal Kumar, who is the father of Appellants as well as Respondent No.1 and husband of Respondent No.3, was the owner of property bearing no. BF-108, Janakpuri, New Delhi ('suit property'), comprising ground floor, first floor, second floor and third floor.

4.1 It is stated that late Sh. Shadi Lal Kumar, during his lifetime, executed a registered Will dated 24.09.2015 in favour of his wife i.e., Respondent No.3. It is stated that by the said Will, he bequeathed the suit property to Respondent No.3 for her lifetime and thereafter, the said suit property was to devolve among the three (3) sons i.e., the Appellants and Respondent No.1.

4.2 It is stated that however, the Appellant No.1 on 04.08.2021 learnt from Respondent No.1 that that entire suit property has been transferred by the Respondent No.3 in favour of Respondent No.2 by way of two (2) separate registered gift deeds dated 26.08.2018 and 06.05.2019.

4.3 The Appellants have challenged the validity of the said gift deeds in the suit. It is the contention of the Appellants that Respondent No.3 could not have executed the said gift deeds as she had a limited life interest in the suit property.

4.4 It is further contended that the movable properties bequeathed by late Sh. Shadi Lal Kumar have been distributed by Respondent No.3 between the three (3) sons as per the Will dated 24.09.2015 and similarly, the suit



property was also to devolve upon the three (3) sons, after the lifetime of the mother i.e., Respondent No.3.

5. A common written statement has been filed by the Respondents asserting that Respondent No.3 became the sole and absolute owner of the suit property by virtue of the registered Will dated 24.09.2015. The Respondent No. 3 has denied that she acquired a limited life interest in the suit property. The Respondent No.3 has admitted the due execution of the gift deeds in favour of Respondent No.2. The Respondents have also admitted the distribution of the movable properties between the three (3) sons; however, Respondent No.3 has alleged coercion.

6. The learned Single Judge after perusing the pleadings has opined that the only issue arising for consideration in the suit is the interpretation of the admitted registered Will dated 24.09.2015 left behind by late Sh. Shadi Lal Kumar.

7. Learned counsel for the Appellants states that a preliminary issue framed under Order XIV Rule 2(2) CPC is limited to issue(s) of jurisdiction or bar created under any law. He states that the issue framed by the learned Single Judge lacks the characteristics of the said categories. He relies upon the judgment of the Supreme Court in *Sathyanath and Another v. Sarojamani*¹.

7.1 He states that the issue framed by the learned Single Judge is a mixed issue of fact and law. He states that such an issue can only be framed under Order XV Rule 3(1) CPC with the consent of the parties. He states that though the Appellants admit the Will dated 24.09.2015, they propose to lead

¹ (2022) 7 SCC 644



evidence (on the averments set out at paragraph 17 of the plaint) in support of the contention that the said Will has been implemented by Respondent No.3 in a manner where the movable properties were equally divided between the three (3) sons. He states that as per the Appellants, this fact negates the contention of the Respondents that the movable and immovable properties were bequeathed exclusively to Respondent No.3. He states, however, the averments at paragraph 17 have been disputed by the Respondents in the written statement and therefore, evidence has to be led by the Appellants.

8. In reply, learned counsel for Respondents states that the Respondents have admitted the division of the movable properties between the three (3) sons, however, Respondent No.3 has explained the coercive circumstances in which she was compelled to carry out the said division by the Appellants. She, however, fairly concedes that for the purpose of determination of the issue framed in the impugned order, Respondents concede that they will not press the argument of coercion pleaded in reply to paragraph 17 of the plaint.

8.1. She states that in view of the admission of the validity of the registered Will dated 24.09.2015 and ownership of late Sh. Shadi Lal Kumar, the claims raised in the plaint do not require any evidence to be led by the parties and the Court is competent to decide the aforesaid issue on the interpretation of the clauses of the said Will read with provisions of Hindu Succession Act, 1956. She relies upon the judgment of this Court in *Jasbir*



Kumar v. Kanchan Kaur and Anr.² in support of her contention that Respondent No.3 has acquired absolute interest in the suit property.

8.2. She states that this appeal is not maintainable as the impugned order framing the preliminary issue is not a judgment within the meaning of Section 10 of the Delhi High Court Act, 1966.

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

10. The twin facts of existence of the valid registered Will dated 24.09.2015 and the ownership of the suit property by late Sh. Shadi Lal Kumar are admitted by the parties.

11. The Appellants have expressed concern only with regard to the proof of averments made by them in paragraph 17 of the plaint as regards creation of fixed deposits. The Respondents in reply to the said paragraph in the written statement have admitted the contents of the table set out in the plaint. Therefore, the creation of the fixed deposits is not disputed by Respondent No.3.

12. The Respondents and more specifically Respondent No.3 is bound down to her statement made before this Court that the contention in the written statement (in reply to paragraph 17 of the plaint) with respect to the alleged coercion in creating the fixed deposits will not be pressed during arguments for decision of the issue framed in the impugned order.

13. It is accordingly, directed that the effect, if any, of the facts set out by the Appellants in the table at paragraph 17 of the plaint shall be considered by the learned Single Judge, as it stands, without taking into consideration

² Decided on 06.02.2017 in RFA 607/2016



the allegations of coercion made in the corresponding paragraph of the written statement.

14. The Appellants are satisfied with the aforesaid directions and are accordingly, agreeable to the adjudication of the issue framed by the learned Single Judge in the impugned order on the admitted facts between the parties.

15. In the considered opinion of this Court, there is no infirmity in the impugned order dated 02.03.2023. In view of the consent of the parties recorded in this order, the issue framed by the learned Single Judge satisfies the conditions set out in under Order XV Rule 3(1) CPC. Further, in view of the admitted position by all parties to the suit, as regards the absolute ownership of late Sh. Shadi Lal Kumar as well as the validity of the Will dated 24.09.2015, the claims and defences raised by the parties only involves the interpretation of the clause of the registered Will dated 24.09.2015 and no further evidence is required to be adduced for deciding the issue. This Court is also of the opinion that the decision on this issue will be sufficient for the decision of the entire suit.

16. With the aforesaid directions and binding the parties to the statements made before this Court, the present appeal is disposed of. The objection raised by the Respondents to the maintainability of the appeal has not been decided in view of the consent recorded above.

17. Pending applications also stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any

JANUARY 04, 2024/msh/aa