



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

% **Judgment reserved on : 23 January 2024**
Judgment pronounced on: 04 March 2024

+ **C.R.P. 311/2023 & CM APPL. 55742/2023**

USHA RANI (DECEASED) THROUGH LR Petitioner
Through: **Mr. Maninder Singh, Sr. Adv.**
along with Mr. Ajay Pipaniya,
Mr. Imtiaz Hussain, Ms. Simran
Chawdhary and Ms. Nikita
Garg, Advs.

versus

CHANDER MOHAN GAUTAM & ORS. Respondents
Through: **Mr. Ram Kumar, Adv. for R-1.**
Mr. Bharat Gupta, Adv. for
DDA/R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This Judgment shall decide the present civil revision petition filed by the petitioner/revisionist, who is the defendant No.1 in the suit filed by the respondents/plaintiffs pending before the learned Trial Court, assailing the Impugned Order dated 16.09.2023 passed by the learned Additional District Judge, North, Rohini Courts, Delhi¹, whereby the petitioner's application under Order VII Rule 11 Code of Civil Procedure Code, 1908² seeking rejection of the plaint, was dismissed.

¹ ADJ

² CPC



FACTUAL BACKGROUND:

2. Briefly stated, the present revision petition has been filed through the legal representative of late Usha Rani, who expired on 29.05.2021 during the pendency of the suit before the learned Trial Court. It is their case that the suit property bearing No. AE-197, Shalimar Bagh, Delhi - 88³ was gifted to Usha Rani vide Gift Deed dated 25.09.1980 by her father late Ram Saroop Gautam, out of natural love and affection and out of free will without any fraud and coercion. It is further claimed that the father of Usha Rani after the Gift deed wrote several letters to the DDA to transfer the lease rights owned by him to Smt. Usha Rani, and, after the due process of law, the lease rights in the suit property were transferred in her name.

3. It is further stated the said Smt. Usha Rani out of her own and her husband's resources, constructed a house on the suit property and executed a registered Conveyance Deed dated 29.01.2008 in her name. It is stated that during the lifetime of Smt. Usha Rani, she had executed a registered Will dated 26th October, 2017 wherein she had bequeathed right, title and interest in the suit property, in favour of her husband Sh. Bharmanand Sharma (Legal Representative of Smt. Usha Rani herein).

4. The grievance of the petitioner is that after 33 years, on 03.01.2017, the respondents herein filed a Civil Suit bearing No. 07/2017 titled as "*Chander Mohan Gautam & Anr. versus Smt. Usha*

³Suit Property



Rani & Ors.” seeking reliefs of declaration, partition, permanent and mandatory injunction in respect of the suit property.

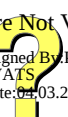
PROCEEDINGS BEFORE THE LEARNED TRIAL COURT AND IMPUGNED ORDER:

5. During the course of the proceedings before the learned Trial Court, on 10.03.2017, the respondent No. 3/DDA herein was impleaded as a necessary party. The learned Trial Court, based on the pleadings of the parties, on 22.10.2018, framed the following issues: -

- “1. Whether suit has not been valued properly for the purpose of court fee? OPD
2. Whether plaintiff has concealed material facts, if so to what effect? OPD1
3. Whether D-1 is the absolute owner of the suit property? OPD1
4. Whether suit is not maintainable due to non-service of the mandatory notice under Section 53B of the DDA Act? OPD5
5. Whether plaintiff is entitled for decree of partition as prayed for? OPP
6. Whether the plaintiff is entitled for decree of permanent injunction, as prayed for? OPP
7. Whether the plaintiff is entitled for decree of permanent injunction, as prayed for? OPP
8. Whether the plaintiff is entitled for decree of mandatory injunction, as prayed for? OPP
9. Relief.”

6. The petitioner, on 25.05.2022, filed an application under Order VII Rule 11 of the CPC for rejection of the plaint filed by the respondents. The grounds taken by the petitioner in the application are reproduced below: -

- “i) The suit of the plaintiff is liable to be dismissed on the ground of limitation. The suit has been filed after the lapse of 33 years which is barred by the Limitation Act, 1908.
- ii) The plaintiff in the entire plaint have not mentioned the fact as to when he came to know about the gift deed which was executed in favour of the defendant no. 1. Hence, creating an illusory cause of action.





- iii) The suit of the plaintiff is liable to be dismissed due to the specific bar of proviso to Section 34 of the Specific Relief Act, 1963. The plaintiff has sought the relief of declaration without the consequential relief of possession.
- iv) The suit of the plaintiff is liable to be dismissed as the plaintiff is challenging the document of gift deed which is more than 30 years old. Hence as per Section 90 of the Indian Evidence Act, 1872.
- v) The plaintiff has not set the pecuniary jurisdiction in the plaint for adjudication. The Plaintiff has valued the suit property for the purpose of court fee of jurisdiction at Rs. 200 on which Rs. 20 has been affixed as court fee.
- vi) The plaintiff has not filed the proper court fee. As per Section 7(v) of the Court Fee Act, 1870 the plaintiff is required to pay court fee on the market value of the property as on the date of filing of the suit. But in the present suit the plaintiff has not filed the court fee as per the market value of the property which is more than 5 crores.
- vii) The suit deserves to be rejected in terms of the provision contained in Order VII Rule 11 of the Code of Civil Procedure in as much as the reading of the plaint and the reliefs claimed will show that the present suit has been filed without any cogent basis.”

7. It is the case of the petitioner, that on 16.09.2023, the learned ADJ adjudicated upon the application under Order VII Rule 11 of the CPC for rejection of the plaint filed by the petitioner and dismissed the said application. The relevant findings of the Impugned Order dated 16.09.2023 are reproduced herein: -

“6. The defendant has filed the present application on various grounds. These grounds are dealt with as under: -

a) Limitation: It is trite law that limitation is a mixed question of law and fact and the same cannot be decided at the stage of an application under Order 7 Rule 11 CPC. The plaintiff in his plaint has alleged that he came to know about the existence of the gift deed recently, although, no specific date is stated by the plaintiff in his plaint. Thus, the plaintiff cannot be thrown out of the court as this juncture and he should be given a fair opportunity to lead evidence upon the question of limitation.

b) Suit of declaration filed without seeking consequential relief of possession: The defendants have contended that the suit for declaration without seeking relief of possession is liable to be rejected. The counsel for the defendant has relied upon the Judgment of Hon’ble Supreme Court of India in *“Venkataraja and Ors. Vs. Vidyane*



Doureradjaperumal (dead) through LRs.” (Law Finder Doc Id #4221135). However, on perusal of the plaint, it is found that the plaintiff in his pleadings, has not pleaded an ouster from the suit property despite pleading the possession of defendant no. 1. He has stated that he is in the constructive possession of the suit property alongwith the other co-sharer. The judgment relied upon by the defendant is not applicable on the present suit as in that case, the question of partition between the co-sharer was not involved rather the sale deed executed by a life estate holder was under challenge. It is a settled proposition of law that co-sharer retain constructive possession on a joint property, unless from the pleadings of the plaintiff an ouster from possession can be inferred, there is no requirement for seeking relief of possession.

c) Presumption under Section 90 of the Indian Evidence Act: The defendant no. 1 has averred in his application that the suit is liable to be rejected as the gift deed is more than 30 years old and therefore, attract presumption under Section 90 of the Indian Evidence Act. Even if, the defendant no. 1 wants to avail the benefit of presumption in his favour, it would not tantamount to a ground for rejection of plaint as the plaintiff had the liberty to rebut the presumption under Section 90 of the Indian Evidence Act. So, the ground taken by the defendant is not sustainable.

d) Non-payment of adequate court fee upon the proper valuation of suit: It is case of the defendant that plaintiff had not valued the suit property correctly. On perusal of the plaint, it is found that the plaintiff has not given any exact valuation of the suit property. For the purpose invoking the pecuniary jurisdiction, the plaintiff ought to have correctly valued the suit which has not been done in the instant case.

7. The application of the defendant no. 1 is dismissed with direction to the counsel for the plaintiff to amend the valuation clause and affix appropriate court fees, if applicable.

GROUND FOR CHALLENGE:

8. The impugned order has been assailed *inter alia* on the grounds that the impugned order was passed without appreciating the facts and disregarding the grounds taken by the petitioner. The petitioner in their revision petition have relied on decision **ITC Limited v. DEBT Recovery Appellate Tribunal**⁴, wherein it was held that:

⁴(1998) 2 SCC 70



“The basic question to be decided while dealing with an application under Order VII Rule 11, CPC is **whether the real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the CPC.** Clause (d) of Order VII Rule 11 CPC makes it clear that **if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected.** It is the duty of the person who files an application under Order VII Rule 11 CPC to satisfy the Court that the plaint does not disclose how the same is within time.”

{bold portions emphasized}

9. Furthermore, in the Civil Suit before the learned Trial Court, the bar of limitation was clear and apparent and the suit ought to have been dismissed. The petitioner in their revision petition also states that the learned ADJ has erred in appreciating that the court fee affixed by the respondents was not adequate and the suit property was not valued correctly.

ANALYSIS & DECISION:

10. Having heard the learned counsels for the parties and on meticulous perusal of the record, before considering the grounds taken by petitioner, it would be useful to examine the provisions of Order VII Rule 11 Code of Civil Procedure, 1908, which read as follows:

“11. Rejection of plaint — The plaint shall be rejected in the following cases:—

(a) where **it does not disclose a cause of action;**

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) **where the suit appears from the statement in the plaint to be barred by any law;**

[(e) where it is not filed in duplicate];

[(f) where the plaintiff fails to comply with the provisions of rule 9];





[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

11. The aforesaid provision has come to be interpreted in series of cases decided by the Supreme Court, this Court as well as various other High Courts and it is replete with the proposition of law that while considering such an application, the Court is supposed to consider the averments in the plaint including the documents filed along with the plaint so as to ascertain the veracity of the pleadings although not necessarily that of the documents. The whole purpose of looking into the averments along with documents is to ensure that the plaintiff approaching the Court should not be creating *an illusory cause of action by adopting clever or ingenious drafting*. The Court has a duty to see through such an attempt of clever drafting and examine the plaint as a whole so as to find out if cause of action is existing and the same is not barred by limitation.

12. There is no gainsaying that the expression ‘cause of action’ is not defined under any statute and the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. v. Union of India**⁵ held that it was to mean “*every fact which would be necessary for the plaintiff to prove, if traversed in order to support his right of judgment i.e., the essential facts that must be proven by a party to obtain a decree, which are material to the case*”.

⁵(2004) 6 SCC 254



13. Invariably, the essential facts have to be, amongst other things, existence of a legal right which has been infringed, issues concerning jurisdiction of the Court and the claim evidently being within the period of limitation. At this juncture, it would be relevant to refer to decision in the case of **Saleem Bhai v. State of Maharashtra**⁶ to understand the scope of Order VII Rule 11 CPC, wherein it was held as under:-

“A perusal of Order 7 Rule 11 CPC. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.....” (Paragraph 9)

14. The aforesaid ratio has also been reiterated time and again, and in the case of **Chhotanben v. KiritbhaiJalkrushnabhai Thakkar**⁷, wherein it was held as under:

“What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane.

15. It is pertinent to indicate that the above case was one where the plaintiff challenged the registered Sale Deed that was executed on

⁶(2003) 1 SCC 557

⁷ (2018) 6 SCC 422

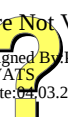


18.10.1996, but it was their specific case that he was not aware of the same until 2013 and as soon as he came to know of it, he immediately took steps to obtain certified copy of the registered sale deed and on obtaining copy thereof, he came to know about the fraud played upon them. It was in the said circumstances, that Supreme Court held that the issue of limitation was a mixed question of law and fact and it was a triable issue.

16. Avoiding long academic discussion, in another case decided by the Supreme Court title **Raghwendra Sharan Singh v. Ram Prasanna Singh**⁸, the plaintiff filed a suit for declaration in 2003 that gift deed dated 06.03.1981, was showy and sham transaction and no title and possession of the gifted property ever passed on to the defendant, who apparently has been in exclusive possession of the property. The defendant was unsuccessful in his application under Order VII Rule 11 of the CPC in the Trial Court as well as High Court. The Supreme Court held as under:-

“Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift

⁸(2020) 16 SCC 601





deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. **Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation.** Therefore, considering the decisions of this Court in *T. Arivandandam* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC. (Paragraph 7)

{bold portions emphasized}

17. In the light of the aforesaid proposition of law, coming to the instant matter, it is pertinent to mention that on reading the averments in the plaint, first thing which is evident is that the plaintiff pleads that property is a built up property No. 197 on an area of 324 Sq. Metres, which belong to his father, who died on 13.10.1993 and in paragraph (5) he acknowledges that the defendant No.1, who was elder to him came in possession and started residing in the suit property having evil eyes on the property. It is averred as under:-

“That it is pertinent to mention here that the defendant no.1 is the elder than the plaintiffs and as such the defendant no.1 came in possession and still living at the suit property. However, it is pertinent to mention here that the defendant no.1 has no ownership rights, as the suit property is still not partitioned or divided till date. But after the death of the father of the parties, the defendant no.1





became dishonest and she developed her intention to grab the suit property.”
(Paragraph 5)

18. In paragraph (7) then the plaintiff makes the following averments:

“That rather the defendant no.1 showed a copy of the document called as “Gift Deed” in her favour, stating that this was executed in her favour by the father of the plaintiffs in respect of the suit property. But the fact is that the suit property has never been partitioned or shared and no such kind of document was ever executed by the father of the plaintiff, hence, that allege document called as “Gift Deed” is nothing more than a false frivolous, fabricated and bogus document.”

19. Now, it would be interesting to reproduce paragraph (12) of the amended plaint, which narrates the arising of the cause of action as follows:

“That the cause of action for filing the present suit arose in favour of the plaintiff and against the defendants on various dates. It arose when the suit property was allotted in name of the father of the parties and it again arose on or after 13.10.1983, when the father of the plaintiffs was expired intestate. The cause of action again arose when the plaintiffs have several times requested the defendants to make the partition of the suit property, but they refused for the same. Specially, the defendant no.1 also tried to sell-out the suit property. The cause of action arose recently on 15.10.2016, when some property dealers visited at the suit property for its inspection and the cause of action is still subsisting and continuing as the suit property has not been partitioned or divided till date.”

20. It would be relevant to point out that Order VI Rule 1 of the CPC defines the expression ‘pleading’ to mean plaint or written statement. Order VI Rule 2 provides that every pleading shall contain, and contain only, a statement in concise form of the material facts on which the party pleading relies for his claim or defence. Order VI Rule 4 provides that in all cases where a party pleading relies on any





misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as exemplified in the forms aforesaid i.e. Appendix 'A', particulars and dates and items if necessary, shall be stated in the pleadings. Order VI Rule 10 also provides that whenever malice, fraudulent intention, knowledge or condition of the mind is alleged, it would be sufficient to allege the same as a fact.

21. The sum total of the aforesaid discussion is that pleadings in the case of a plaint should disclose, in concise form, the material facts, such as misrepresentation, fraud, breach of trust as also malice or ill-will. The averments in the plaint read, as a whole should bring out a cause of action in a manner which is appealable to common sense, logic and justification in law.

22. I am afraid that, on a careful perusal of the aforesaid averments in the instant matter, it is evident that entire 'cause of action' is illusionary. There is no averment as to as to when there was raised construction in the property and by whom or at what costs. There is no *iota* of whisper if, after getting to know that there was a Gift Deed, the plaintiff applied to the Sub registrar' Office and/or Delhi Development Authority ["**DDA**"] to ascertain the relevant documents in this regard. All these years, none of the other legal heirs of the deceased have bothered about payment of house tax, electricity or water charges, or for that matter the upkeep, repairs or maintenance of the suit property. Such facts are not matter of defence so as to travel outside the pleadings but very much part of the human behaviour and experience of exercising some kind of assertion of legal right over

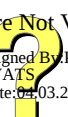




one's property. The plaintiff is attempting to conceal more than what he is revealing and the entire suit is nothing but gross misuse and abuse of process of law.

23. At the cost of repetition, in paragraph (12) of the amended plaint, an illusion is created that he had always been requesting the petitioner/defendant No.1 to partition the property or dispose of the same, and then all of a sudden, on one fine day i.e. 15.10.2016, he claims that cause of action arose when some dealers visited the suit property for inspection. There is no averment as to when he came to know about the Gift Deed. There are no letters or notices relied upon which would suggest that respondent No.1/plaintiff ever demanded petitioner/defendant No.1 to get the property partitioned or dispose of so as to apportion the sale proceeds of the suit property as amongst the members of the family.

24. In view of the aforesaid reasons, I find that the cause of action espoused by the respondent/plaintiff is sham, illusionary and patently false. The pleadings are a product of clever and ingenious drafting by his counsel so as to account for long 33 years of silence and bring the suit within limitation. The plaint, read as a whole, appears to be founded on facts and circumstances that belies common sense and logic. Allowing this kind of a frivolous suit to continue, would put enormous strain on the justice delivery system. Therefore, I find that there exists no cause of action in favour of the respondents/plaintiffs to institute and pursue the remedy in law and the claim is hopelessly barred by limitation.





25. Accordingly, the present revision petition is allowed. The impugned order dated 16.09.2023 is set aside. The plaint of the respondent No.1/plaintiff is hereby rejected for want of cause of action and being barred by limitation in terms of Order VII Rule 11 (a) & (d) of the CPC.

26. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 04, 2024

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