



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 06 May 2024**
Judgment pronounced on: 02 July 2024

+ **C.R.P. 352/2023 & CM APPL. 61735/2023, CM APPL. 67041/2023**

RAJNI KHANNA Petitioner
Through: **Dr. Manish Aggarwal, Ms. Barnali Paul, Advocates**

versus

SIDHARTHAN Respondent
Through: **Mr. Ranjan Sharma, Advocate**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

1. The petitioner/revisionist, who is the defendant in the suit filed by the respondent/plaintiff pending before the learned Trial Court, has preferred the present civil revision petition, assailing the impugned order dated 12.05.2023 passed by the learned Civil Judge, North West District, Rohini Courts, Delhi¹, whereby her application under Order VII Rule 11 of the CPC² seeking rejection of the plaint was dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, the petitioner/defendant and the respondent/plaintiff are siblings, and admittedly their mother was the true and absolute owner of the suit premises. The respondent/plaintiff claims to have enjoyed peaceful possession of the suit premises since the time

¹Trial Court

²Code of Civil Procedure, 1908



their mother purchased it, and acknowledges that the mother transferred her entire share of the suit premises to the petitioner/defendant through a Gift Deed dated 14.02.2020. The mother passed away on 16.03.2021, leaving the petitioner and respondent as her only legal heirs. The respondent/plaintiff alleges that their mother was of unsound mind before her death and it is alleged that the petitioner/defendant manipulated their mother into executing the said Gift Deed in her favour.

3. The respondent/plaintiff filed **a civil suit for Declaration and Permanent Injunction** against the petitioner/defendant in regard to the Flat bearing No. 30-A, Ground Floor, Block – AJ, Shalimar Bagh, New Delhi³. It would be apposite to refer to the prayers sought by the respondent/plaintiff: -

- a. To pass a decree for declaration against the defendant thereby declaring the Gift Deed dated 14.02.2020 in favour of the defendant as NULL & VOID.
- b. to pass a decree of permanent injunction in favour of the plaintiff and against the defendant for directing and restraining the defendant, her agent, associates, relatives, representative not to dispossess the plaintiff from the suit property i.e. **FREE HOLD DDA BUILT UP LIG FLAT BEARING NO. 30-A, GROUND FLOOR, BLOCK -AJ, SITUATED IN THE LAYOUT PLAN OF SHALIMAR BAGH RESIDENTIAL SCHEME, SHALIMAR BAGH, DELHI – 110088** and further not to create and third party interest let-out, transfer, sell, mortgage or sale the suit property.
- c. The cost of the suit may also be awarded in favour of the plaintiff and against the defendant.
- d. Any other relief or remedy which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiff and against the defendant."

³Suit premises



4. The grievance of the petitioner/defendant is that the civil suit filed by the respondent/plaintiff does not disclose any cause of action in his favour and against the petitioner/defendant; and that the Gift Deed dated 14.02.2020 was duly registered on 03.03.2020 by Late Smt. Usha in favour of the petitioner/defendant, which was legal and valid disposition of the subject property in her favour by her mother out of her own free will and volition. Following the execution of the Gift deed, the petitioner/defendant became the sole and exclusive owner of the suit premises, and that the respondent/plaintiff has no right, title or interest in the suit property and rather he has illegally trespassed into the same.

THE IMPUGNED ORDER:

5. The petitioner/defendant filed an application under Order VII Rule 11 of the CPC on 26.09.2022, which was decided by the learned Trial Court vide impugned order dated 12.05.2023, wherein the application was dismissed and it would be apposite to refer to the relevant observations in the impugned order, which are as under:

“5. The grounds for rejection of plaint very limited. It is a settled law that for the purpose of decision of an application u/o VII Rule 11 CPC, the Court should only consider the plaint and the documents accompanying the plaint and nothing else. The averments of the plaint, without addition or subtraction, without any compartmentalization or dissection, must show that the provisions of Order VII Rule 11 CPC are attracted. The defence of the defendants is not to be considered. While rejecting the plaint on the ground that the plaint does not disclose a cause of action the plaint must be taken to admit, for the sake of arguments, that the allegations of the plaintiff are true in manner and form. Reference may be made to the judgments titled **Popat and Kotecha Properties V/s. State Bank of India Staff Association, 2005 (7) SCC 510; Inspiration Clothes v/s/ M/s. Colby International Ltd., 88 (2000) DLT 769 (DB); Liverpool & London S.P.**



& I Assn. Ltd. V/s. M.V. Sea Success 2004 (9) SCC 512, Sopan Sukhdeo Sable V/s. Assistant Charity Commissioner, 2004 (3) SCC 137.

Hon'ble Supreme Court of India in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs. and Ors. (2020) 7 SCC 366** has reiterated the test for exercising the power under Order 7 Rule 11 which is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in **Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512]** Order VII Rule 11 (a) CPC deals with a situation where the plaint does not disclose a cause of action. What is a cause of action has been defined in **Swamy Atmananda Vs. Sri Ramakrishna Tapovanam (2005) 10 SCC 51** and has been reiterated in **Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706**, as being a bundle of facts that are material and relevant for the decision of the case and which are required to be proved by the plaintiff to be entitled for reliefs claimed in the suit. The word used in Order 7 Rule 11 (a) is "disclose". Thus, while considering an application of Order 7 Rule 11, it has to be only seen whether plaint along with documents annexed "discloses" a cause of action. Proof or disproof of the same is a matter of trial and cannot be considered at this stage.

6. Coming to the facts of the present case, the plaintiff has prayed for two reliefs -

- 1) Relief of declaration thereby declaring the gift deed dated 14.02.2020 as null and void
- 2) for permanent injunction thereby restraining the defendant from disposing the plaintiff from the suit property.

The defendant has heavily relied upon the judgment of **Hon'ble High Court of Delhi in Rajeev Kapoor Vs Janak Kapoor [286 (2022) DLT 685]** primarily on the ground that it has been held in the said judgment that once a conveyance deed is executed and a transfer of the property or its portion thereof is made by way of a registered gift deed, then such registered gift deed cannot be challenged if the conveyance deed itself is not disputed and is not under challenge.

7. It is pertinent to note that in a recent judgment of Hon'ble Supreme Court of India in **A. SUBRAMANIAN vs. R. PANNERSELVAM (CIVIL APPEAL NO.9472 of 2010)**, it has been held that possession is good against all but the true owner and that even trespasser, who is in established possession of the



property could obtain injunction to protect his possession. In the facts of the present case, the question of title can only be decided once evidences are led and cannot be adjudicated at this of deciding application under order 7 rule 11. Even if the judgment relied upon by the defendant is taken into consideration, even then, it would only have relevance only as regards prayer of declaration to declare the gift deed dated 14.02.2020 as null and void. Reliance upon the said judgment is misplaced qua the second prayer for permanent injunction thereby restraining the defendant to not dispossess the plaintiff from the suit property.

8. It is settled principle of law that Plaint can either be rejected as a whole or not at all. Thus, in my considered opinion, the pleadings in the plaint constitute a sufficient bundle of facts to disclose a cause of action arising in favour of the plaintiff. Proof or disproof of the same is a matter of trial.

9. Apropos the foregoing discussion, the application in had stands dismissed.”

ANALYSIS & DECISION:

6. Having bestowed my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this court finds that the plaint read as a whole lacks cause of action, and thus, the impugned order cannot be sustained in law.

7. First things first, let us briefly discuss the law applicable for deciding the application under Order VII Rule 11 CPC, which reads as under :

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

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

xxx

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

8. There is no gainsaying that the case law is replete with the proposition that the remedy under Order VII Rule 11 CPC is an



independent special one, whereby the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence if it is satisfied that the action should be terminated on any of the grounds contained in the provision. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed or the suit is barred by limitation, under Rule 11(d), the plaintiff cannot be allowed to unnecessarily protract the proceedings in the suit, thereby requiring a full-fledged trial and the court can put an end to ashram litigation so that precious judicial time is not wasted.

9. Avoiding long academic discussion on the subject, in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali**⁴, the Supreme Court had an occasion to examine the entire scope and gamut of the applicability of Order VII Rule 11 CPC and reference was made to the decision in **Azhar Hussain v. Rajiv Gandhi**⁵ wherein it was held that *“the whole purpose of conferment of power under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the Court”*.

10. Thus, it was held that there is a duty cast on the Court to determine whether the plaint discloses a “cause of action” by scrutinising the averments in the plaint, which is to be read in conjunction with the document relied upon. It is also well settled that at this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on merits would be irrelevant, and cannot be adverted to, or taken into consideration.

⁴(2020) 7 SCC 366

⁵1986 Supp. SCC 315



Further, in the cited case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali (supra)***, the test for exercising power under Order VII Rule 11 CPC was propounded to the effect that the Court has to examine on the basis of the averment in the plaint, taken in its entirety, in conjunction with the document relied upon, as to whether it would result in a decree being passed.

11. In the light of the aforesaid proposition of law reverting back to the instant matter before this Court, on a careful perusal of averments of the plaint finds that the respondent/plaintiff acknowledges that his late mother was the absolute owner of the property in question inasmuch as a the Conveyance Deed had been executed in her favour by DDA on 03.05.2013, and therefore, without any question his mother had absolute right, title and interest to dispose of, alienate or give away such property to anyone as per her own volition.

12. The respondent/plaintiff also acknowledges that his mother died on 16.03.2021 before executing a registered Gift Deed in favour of the petitioner/defendant dated 14.02.2020. Again, at cost of repetition, on a bare perusal of the averments in the plaint, the cause of action seems to be that *their mother was a person of unsound mind*, and therefore, the execution of the Gift Deed in favour of the petitioner/defendant is assailed. I am afraid that except for a bald averment that their mother was a person of an unsound mind, there is no averment whatsoever as to how and/or in what manner, or to what extent the mother was mentally and/or psychologically impaired, and if at all, she was incapacitated to understand the nature of consequences of her acts or omissions. 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**⁶ 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*”.

13. At this juncture, it would be relevant to refer to certain rules that are encompassed in Order VI of the CPC as under :

“2. Pleading to state material facts and not evidence.—(1)

Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. (2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph. (3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

6. Condition precedent. —Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

9. Effect of document to be stated.—Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

10. Malice, knowledge, etc.—Wherever it is material to allege malice, fraudulent intention, knowledge or **other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.** {bold portions emphasized}

⁶(2004) 6 SCC 254



14. The sum result of a careful perusal of the aforesaid rules in Order VI of the CPC is that it needs to be emphasized that every pleading should contain a concise form of **material facts** on which the party pleading relies for his or her claim or defense. Further the party *must state material facts in a concise form, conditions precedents*, if any, for filing the claim or raising a defense, besides the effect of any documents which are material. Further, the parties are enjoined upon to specifically orchestrate the condition of mind of any person when the material facts pertain to the condition of mind of that person.

15. Reverting back to the instant matter, a mere bald assertion that their mother was of unsound mind without pleading of any material facts as to the history and nature of any medical ailment, or any kind of erratic or abnormal behaviour or disposition of mind on the part of the deceased in dealing with day to day routines or in her interaction with members of her own family and others in the immediate society. There is neither any reliance on any examination report of any medical practitioner or a psychiatrist nor there is reliance on any document concerning what kinds of drugs/medicine, if at all, were being administered to her. There is no averment as to who was taking day to day care of their mother during such time of her being a person of unsound mind. Lastly, there is no averment as to how or in what manner the petitioner/defendant manipulated or practiced fraud or deception upon her mother to get the gift deed registered and executed as to be the done thereof

16. To sum up, the averments in the plaint are wild allegations, and it is difficult to fathom that the plaint discloses any cause of action worth



its salt. The whole cause of action miserably lacks essential facts and material and appears to be sham, moonshine and illusionary. The averments in the plaint read as a whole fail to disclose a cause of action in a manner which is appealable to common sense, logic and justification in law.

17. In view of the foregoing reasons, the present Revision Petition is allowed. The impugned order dated 12.05.2023 passed by the learned Trial Court is hereby set aside and the plaint stands rejected. Nothing shall survive in the pending suit between the parties.

DHARMESH SHARMA, J.

JULY 02, 2024
VLD