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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 306/2024, CM APPL. 62117/2024, CM APPL. 62119/2024**
VARTIKA VATS

.....Petitioner

Through: Mr. Bhavesh Kumar Sharma,
Advocate.

versus

SHIVAM AGGARWAL

.....Respondent

Through: Mr. Naresh K. Daksh, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

22.10.2024

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CM APPL. 62118/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The application is accordingly disposed of.

C.R.P. 306/2024

3. A Revision Petition under Section 115 read with Section 151 CPC has been filed against the Order dated 03.06.2024 vide which the learned ADJ, Delhi has rejected the Application under Order VII Rule 11 CPC filed by the Revisionist/defendant seeking rejection of the Civil Suit No.598 of 2022 seeking Declaration, Rendition of Account, Permanent and Mandatory Injunction in respect of the Property bearing No.RZ-81, Dabri Extn., Main Palam Road, New Delhi-110045 (hereinafter referred to as the "Suit Property").



4. The plaintiff/respondent in his Suit had asserted that he had been taken by the defendant No.1 to the Office of Sub-Registrar on the pretext of execution of a Rent Deed. However, subsequently, he had come to know that it was a Gift Deed dated 14.07.2021 which got executed, without he being even informed about the contents of the said Deed. It is further claimed by the plaintiff that even after the purported Gift Deed was executed, the plaintiff continued to exercise his ownership by renting out the part suit property and collecting the rent and also remained in possession of the part property. It is further asserted that the defendant No.1 has been collecting the rent from the tenants and had not paid it to the plaintiff and has also failed to render the accounts or give the share of rent to the plaintiff.

5. **A Civil Suit No.973/2021 was filed by Kusum Bansal and the plaintiff** in August, 2021 wherein averments were made that defendant No.1 and 2 and their associates had been pressuring the plaintiff/respondent herein to withdraw the suit and had threatened them with dire consequences.

6. The Reply/Counter-Claim was filed by the defendants, wherein the copy of the purported Gift Deed was also filed. When the plaintiff came to know that the purported Gift Deed has been got executed from the plaintiff, he sought the cancellation of the Gift Deed which the defendant/revisionist herein refused to cancel and hence, he has filed the present Suit for *Declaration and consequential reliefs*.

7. The defendant No.1/the Revisionist then filed an Application under Order VII Rule 11 CPC seeking rejection of the Suit on the ground that the reliefs which have been claimed in the subsequent suit should have been asserted in the earlier suit filed on behalf of the plaintiff, and the suit is barred under Order II Rule 2 CPC. It is further asserted that Sub-Registrar



who had registered the Gift Deed, was the necessary part who has not been impleaded.

8. Learned ADJ vide impugned Order dated 03.06.2024 considered the contentions raised in the Application under Order VII Rule 11 CPC and vide detailed impugned Order, rejected the Application under Order VII Rule 11 CPC. Aggrieved, the present Revision Petition has been filed.

9. **Submissions heard from both the parties.**

10. The first ground taken on behalf of the Revisionist/defendant No.1 is that the plaintiff has failed to challenge this Gift Deed in his earlier suit and thus, the present suit is barred by Order II Rule 2 CPC.

11. The plaintiff has taken a specific plea that he had been taken to the office of Sub-Registrar, Kapashera by the defendant in July, 2021 on the pretext of registration of the Rent Agreement and was made to sign the documents without being permitted to read the contents. Thereupon, the defendants have not been paying the rent and one Civil Suit was filed by the plaintiff. In that suit the defendant/revisionist had relied upon the Gift Deed dated 14.07.2021 about which the plaintiff came to know from the documents so filed by the defendant No.1 and thus he filed the present suit.

12. It has been rightly observed by the learned ADJ that the plaintiff as per the averments made in the plaint, became aware of the execution of the Gift Deed only subsequent to filing of the earlier suit. Whether the plaintiff was already aware of the execution of the Gift Deed or became aware about it subsequently, is a matter of evidence which cannot be decided merely on the contentions raised by the defendant. Triable issues of fact and law have been raised. In the plaint when read as a whole, it is specifically averred that the knowledge of the Gift Deed was gained by the plaintiff only subsequent



to filing of the present suit. *Prima facie* the bar of Order II Rule 2 is not applicable.

13. Learned ADJ, has passed a reasoned Order and dismissed the Application under Order VII Rule 11 CPC by giving cogent reasons.

14. There is no merit in the present Revision Petition, which is hereby dismissed along with the pending Application.

NEENA BANSAL KRISHNA, J

OCTOBER 22, 2024/va