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

+ **FAO(OS) 6/2018, CM APPL. 1207/2018 (Interim relief) & CM APPL. 31091/2018 (Dir.)**

SUSHIL KUMAR GUPTA & ANR

.....Appellants

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Aryan Kumar, Ms. Nandita Sharma, and Ms. Rashi Singh, Advocates.

versus

RAKESH GUPTA & ORS

.....Respondents

Through: Mr. R.K. Mishra and Ms. Diksha Goswami, Advocates for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER
12.08.2025

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1. Through this Appeal, the Appellants assail the correctness of the Orders dated 23.05.2017 and 13.10.2017 passed in C.S.(O.S.) 1161/2015 titled as “*Rakesh Gupta & Anr. v. Sushil Kumar Gupta & Ors.*” by the learned Single Judge of this Court. The learned Single Judge, *vide* order dated 23.05.2017, dismissed the application seeking rejection of the plaint under Order VII Rule 11(a) of the **Code of Civil Procedure, 1908 (“CPC”)**; and *vide* order dated 13.10.2017, dismissed the Review Petition No. 314/2017 filed by the Appellant herein.



2. At the outset, it is pertinent to note that the Plaintiffs [*Respondents No. 1 & 2 herein; Respondent No. 2, since deceased, in the present appeal are through LRs*] and Defendant No. 1 (*Appellant No. 1 herein*) are brothers. Smt. Angoori Devi Gupta, i.e. Defendant No. 4 [*Respondent No. 3 herein, since deceased, in the present appeal are through LRs*] is the mother of the Plaintiffs and Defendant No. 1. Smt. Anjali Gupta, i.e. Defendant No. 2 (*Appellant No. 2 herein*) is wife of Defendant No. 1.

3. Smt. Angoori Devi, is alleged to have executed a registered gift deed in favour of Defendant No. 1, namely Sushil Kumar Gupta, on 21.04.2015. The Plaintiffs claim that Smt. Angoori Devi had executed a Will on 31.05.2010, followed by a Codicil dated 23.03.2011, bequeathing the property in favour of her four sons.

4. The Plaintiffs have filed a suit seeking a decree of declaration along with the consequential relief of permanent injunction, alleging that the Will dated 31.05.2010 and Codicil dated 23.03.2011 were, in fact, a Memorandum of Family Settlement, thus preventing the execution of the gift deed.

5. Defendant No. 1 filed an application under Order VII Rule 11 of the CPC for rejection of the plaint, contending that it does not disclose any cause of action, which came to be dismissed by the learned Single Judge, *vide* order dated 23.05.2017.

6. This Court has heard the learned counsel for both parties at length.

7. In Paragraph 33 of the plaint, the Plaintiffs have pleaded their cause of action to file the suit in the following manner:-

“33. That the cause of action for filing the present suit arose in favour of the plaintiffs and against the defendants on 17.3.2015



when the defendant No. 1 tried to forcibly dispossess the plaintiff No. 1 from the first and second floor of the Defence Colony property and then again on 21.4.2015 when the defendants No. 1 & 2 illegally and fraudulently got certain title documents in the nature of a Gift Deed executed from defendant No.4 Smt. Angoori Devi Gupta, in her semiconscious, critically ill, delirious state where she was not aware of her acts and omissions and was incapable of taking a considered decision. The cause of action-in favour of plaintiff is continuing even at the time of filing of the present suit.”

8. Learned counsel for the Appellants contends that the Will and Codicil cannot be treated as a Memorandum of Family Settlement, and, therefore, the Plaintiffs have no cause of action to file the present suit.

9. *Per contra*, learned counsel for the Respondents submits that the scope for rejection of plaint at the threshold is extremely limited and the Plaintiffs have incorporated in their plaint a specific paragraph with regard to cause of action in filing the suit.

10. The bundle of facts in a particular case constitutes cause of action. At this stage, only the averments made in the plaint are required to be taken into account while deciding the application under Order VII Rule 11 of the CPC. Whether the Will and Codicil is, in fact, a Memorandum of Family Settlement or not, can only be determined after permitting the parties to lead evidence. However, certain observations have been made by learned Single Judge in Paragraph 19 of the order dated 23.05.2017, which reads as follows:-

“19. From these averments in the document, the intention of the executants is amply clear. She desired to settle the beneficiaries under this document in respect of the properties they will hold and that is why permitted them to get the properties mutated in their names. The rights under these documents are created in praesenti. The wish of executor to get the old structure demolished and new building be raised within four years also fortifies her intention to permit the beneficiary under the document to get the properties



reconstructed. Prima facie from the language of the document it appears that she had created right, title and interest in the properties in favour of the beneficiaries in praesenti. This document, therefore, supports the averments and contention of the plaintiff that rights in respect of properties in their possession was created in their favour under this document. The plaintiffs have also clearly stated that they are in occupation and possession of the properties given to them under this document. In the light of the above, it cannot be said that the plaintiffs do not have a cause of action in their favour.”

11. Learned counsel for the Plaintiffs submits that the learned Single Judge has only noticed the contention of the learned counsel for the Plaintiffs. However, it is evident that Paragraph 19 of the impugned order does not show that the learned Single Judge has noted only the contentions of the learned counsel.

12. At this stage, it was inappropriate for the learned Single Judge to express any opinion on the merits of the case, especially considering that the parties have yet to lead their evidence.

13. In light of the aforesaid discussion, the observation made in Paragraph 19 of the order dated 23.05.2017, shall stand set-aside.

14. Additionally, while dismissing the Review Petition filed by Defendant No. 1 vide order 13.10.2017, Paragraph 7 of the said order reads as follows:-

“7. In view of the fact that this court had concluded that the documents dated 31.05.2010 was not a Will but a settlement, the contention has no consequence.”

15. We hold that even these observations were not warranted at this stage, and therefore, the observations made in Paragraph 7 of the order dated 13.10.2017, are also set-aside.

16. The learned Single Judge is requested to decide the case uninfluenced by the observations made in the orders passed on



23.05.2017 and 13.10.2017.

17. Accordingly, the present Appeal along with pending application(s), if any, stands disposed of in aforesaid terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 12, 2025/tk/ds