

**IN THE COURT OF SH. SACHIN SOOD,
DJ-01 (CENTRAL), TIS HAZARI COURTS, DELHI**

CS No. 872/23

Sh. Padam Chand Jain

...PLAINTIFF

V E R S U S

Sh. Arun Kumar Jain

...DEFENDANT

ORDER

20.01.2025.

1. Vide the present order, I shall decide an application u/o 14 Rule 5 CPC filed by the defendant seeking amendment of issues framed on 14.12.2023.
2. It is the case of the plaintiff that the plaintiff is the sole and absolute owner of the suit property by virtue of gift deed dt 05.09.2005 having been executed in his favour by the previous owner Smt Sewa Devi Jain. The defendant and his father were inducted as tenants by Smt Sewa Devi Jain vide rent receipt dt 02.08.1982 on at a monthly rent of Rs 150/-. The plaintiff further contends that vide letter dt 31.03.2007 the defendant and his father was requested to attorn the plaintiff as their landlord and the defendant has been paying rent to the plaintiff thereafter and last rent was paid on 05.01.2013 vide rent receipt.
3. That since the defendant was threatening to part with possession, a civil suit was instituted by the plaintiff against the defendant being CS no 2605/19 in which the defendant has renounced his character of a tenant and has set up title in respect of the suit property in himself and others. The defendant further has filed a substantive suit claiming partition of the suit property and

has also renounced his character as a tenant qua the suit property and accordingly has forfeited his tenancy rights.

4. The plaintiff has further intended that the defendant despite the receipt of legal notice dt 01.12.2020 whereby the tenancy of the defendant was terminated had not vacated the suit property hence the present suit for possession has been filed claiming a decree of possession with respect to the suit property, recovery of arrears of rent and mense profits togetherwith interest.
5. The defendant in his WS has contended that the defendant is not the tenant qua the suit property who infact is the owner thereof. It is further contended by the defendant that the family settlement dt 18.08.1982 nomenclatured memorandum of partition under which the predecessor in interest of the plaintiff was allocated the 3 properties including the suit property was got executed after the death of Sh Kundan Lal Jain under coercion where the father of the plaintiff was made to sign on dotted lines. It is further contended by the defendant that it was agreed between all the parties in the year 1982 that after the demise of Smt Sewa Devi all the 3 properties including the suit property would be equally divided amongst the three sons of Late Sh Kundan Lal Jain and also that during the lifetime of Smt Sewa Devi, the parties in possession of the suit property will pay a nominal rent to Smt Sewa Devi. It is further contended by the defendant that after the death of Smt Sewa Devi on 22.09.2010, the parties continued to occupy the respective portions as owners thereof and rent has been paid to Smt Sewa Devi till the date of her death by the father of the defendant. It is further contended by the defendant that the memorandum of partition dt 18.08.1982 is a void document and has not been registered and accordingly is not binding upon the father of the defendant and

also upon the defendant despite the same having been referred in previous litigation between the father of the defendant and the other two brothers. It is further contended by the defendant that the gift deed dt 05.09.2005 has been got executed by the plaintiff in his favour from Smt Sewa Devi without the knowledge of any member of the family and by practicing forgery and fabrication at the instance of the plaintiff and a substantive suit being CS (OS) No 635/19 titled Arun Kumar Jain Vs Padam Chand Jain & Ors has been filed by the defendant challenging the gift deed dt 05.09.2005. As per the defendant the said suit is pending adjudication before Hon'ble High Court of Delhi. It is further contended by the defendant that the present suit is barred u/s 50 of Delhi Rent Control Act since the court being a civil court has no jurisdiction since the rate of rent of the suit property is Rs 165/- per month.

6. In the replication, it has been denied by the plaintiff that the defendant was not the tenant qua the suit property or the defendant has derived his ownership, rights, title or interest in the suit property in any manner. It has been contended that Smt Sewa Devi was allocated half share in the suit property under the partition effected on 01.08.1982 and on 02.08.1982 the defendant and his father took on rent the suit property on a monthly rent of Rs 150/- w.e.f. 01.08.1982 and the oral partition was reduced to writing on 18.08.1982 duly signed by the father of the defendant in the presence of the witnesses. It has been contended that the defendant and his father have paid rent to Smt Sewa Devi till the year 2004 and Smt Sewa Devi vide letter dt 21.03.2007 requested the defendant and his father to attorn the plaintiff as their landlord in view of having executed the gift deed. Pursuant to letter dt 21.03.2007 the defendant and his father have tendered rent to the plaintiff

w.e.f. 01.04.2004 to 31.03.2007 and thereafter the defendant had paid rent to the plaintiff till 31.03.2013. It has further been contended that since the defendant has renounced his character of tenant qua the suit property by setting up a title in himself hence the tenancy of the defendant stood forfeited and the suit property is occupation of the defendant as a trespasser and as ex-tenant.

7. Thereafter upon completion of the admission-denial of documents, proposed issues were filed on behalf of the plaintiff as well as the defendant.
8. Vide orders dt 14.12.2023, the following issues were framed with the consent of the parties:

1. Whether the plaintiff is entitled to a decree of possession with respect to suit property (shop) in property bearing Municipal No. 1976, Katra Kaushal Rai, Kinari Bazar, Chandni Chowk, Delhi-06 and as shown in red colour in the site plan? OPP

2. Whether the plaintiff is entitled to the arrears of rent alongwith interest? If so, at what rate and for what period? OPP

3. Whether the plaintiff is entitled to a decree of mesne profits? If so, at what rate and for what period? OPP

4. Relief.

9. Thereafter the plaintiff examined himself as PW-1 who was cross examined on various dates and thereafter PE was closed on 04.06.2024. It is pertinent to mention that evidence has been lead by the plaintiff on the lines of the plaint claiming a landlord/tenant relationship between the parties.
10. The defendant thereafter filed the evidence by way of affidavit of DW-1 i.e. Arun Kumar Jain and the said witness has been cross examined on 31.07.2024 & 31.08.2024.
11. Ld counsel for the defendant/applicant has argued on the lines of the WS and has thus contended that the defendant is the co-owner of the suit property

and that the following 4 additional issues be thus framed in the present matter:

- i. Whether there exists no landlord and tenant relationship between the parties? OPD.
- ii. Whether the memorandum of partition dt 18.08.1982 is enforceable in the eyes of law? OPD
- iii. Whether the plaintiff is not entitled to claim exclusive ownership rights in the suit property on the basis of the gift deed dt 05.09.2005 and whether the said gift deed is a fraudulent document? OPD
- iv. Whether the present suit is barred under Section 50 of the Delhi Rent Control Act 1958? OPD

12. On the other hand, Ld counsel for the plaintiff/non applicant has submitted that the application is liable to be dismissed and has been preferred so as to delay the disposal of the present suit and also that the issues were framed in the presence of the counsel for the defendant who has not pressed any other issue at the time of framing of the issues and that the evidence from the side of the plaintiff stands concluded and at present the defendant is under cross examination pursuant to his filing evidence by way of affidavit.

13. Arguments heard. Record perused.

14. In terms of under Order 14 Rule 5 CPC, power has been given to the court to amend the issues or frame additional issues as may be necessary for determining the matters in controversy between the parties. It is not in dispute that the present suit has been filed by the plaintiff seeking recovery of possession, arrears of rent & mense profits togetherwith interest thereupon primarily proceeding on the basis of landlord and tenant relationship between the parties. The plaintiff in the suit has stated that the defendants continued

to pay the rent till 31.03.2013 and the last rent was paid to the plaintiff on 05.01.2013 and the defendant is in arrears of rent w.e.f. 01.04.2013 who has since renounced his character as a tenant qua the suit property and has set up a title in himself hence vide notice dt 01.12.2020 the tenancy of the defendant stood forfeited and the same was also terminated and yet the defendant has failed to hand over the physical possession of the suit property who is thus liable to pay mense profit to the plaintiff. Thus the entire case of the plaintiff is on the basis of relationship between the parties as landlord and tenant and the relief of possession is thus based upon the establishment of such a relationship by the plaintiff qua which evidence has been led by the plaintiff.

15. The defendant in his WS has taken the stand that he is not the tenant qua the suit property who infact is the owner thereof. It is contended by the defendant that the family settlement dt 18.08.1982 nomenclatured memorandum of partition under which the predecessor in interest of the plaintiff was allocated the 3 properties including the suit property was got executed after the death of Sh Kundan Lal Jain, under coercion where the father of the plaintiff was made to sign on dotted lines. It is further contended by the defendant that it was agreed between all the parties in the year 1982 that after the demise of Smt Sewa Devi all the 3 properties including the suit property would be equally divided amongst the three sons of Late Sh Kundan Lal Jain and also that during the lifetime of Smt Sewa Devi the parties in possession of the suit property will pay a nominal rent to Smt Sewa Devi. It is further contended by the defendant that after the death of Smt Sewa Devi on 22.09.2010, the parties continued to occupy the respective portions as owners thereof and rent has been paid to Smt Sewa Devi till the date of her death by the father of the defendant. It is further contended by the defendant that the

memorandum of partition dt 18.08.1982 is a void document and has not been registered and accordingly is not binding upon the father of the defendant and also upon the defendant despite the same having been referred in previous litigation between the father of the defendant and the other two brothers. It is further contended by the defendant that the gift deed dt 05.09.2005 has been got executed by the plaintiff in his favour from Smt Sewa Devi without the knowledge of any member of the family and by practicing forgery and fabrication at the instance of the plaintiff and a substantive suit being CS (OS) no 635/19 titled Arun Kumar Jain Vs Padam Chand Jain & Ors has been filed by the defendant challenging the gift deed dt 05.09.2005. As per the defendant the said suit is pending adjudication before Hon'ble High Court of Delhi.

16. Thus on the basis of the pleadings of the parties the court had proceeded to frame an issue i.e. ***Whether the plaintiff is entitled to a decree of possession with respect to suit property (shop) in property bearing Municipal No. 1976, Katra Kaushal Rai, Kinari Bazar, Chandni Chowk, Delhi-06 and as shown in red colour in the site plan? OPP***
17. From the perusal of the aforesaid issue it is evident that the same has been framed upon the pleading of the parties. It is evident that the same duly includes a proposed issue no (i) since the relief as sought by the plaintiff is based upon the landlord tenant relationship allegedly subsisting between the parties and no separate issue is required to be framed separately as it goes without saying that the plaintiff in the scope of issue no (i) as framed by the court has to prove in the affirmative the landlord and tenant relationship and forfeiture of tenancy as claimed. The defendant though is at liberty to rebutt

the evidence of the plaintiff on issue no 1 however there arise no need to frame an issue with regard to landlord and tenant relationship and further in placing the onus on the defendant of the said issue.

18. The defendant besides issue no (i) has also sought the framing of issue no (ii) & (iii) which 2 issues are the subject matter of CS (OS) no 635/2019 titled Arun Kumar Jain Vs Padam Chand Jain & Ors presently pending adjudication before Hon'ble High Court of Delhi.

19. It is relevant to note that the Hon'ble High Court of Delhi vide order dt 01.10.2024 dismissed the transfer application as preferred by the defendant herein after minutely analyzing the pleadings of the two suits i.e. suit being no CS OS no 635/2019 & the present suit. The Hon'ble High Court of Delhi was pleased to hold that the subject matter of the two suits are different. Para 19 to para 21 of the judgment dt 01.10.2024 being relevant are being reproduced as follows:

“ 19. This Court further is of the opinion that the issue-in-question, in the suit pending before the learned ADJ, pertains to partition of the suit properties, the forfeiture of tenancy and quantum of mesne profits, whereas in the suit pending before this Court, the issue pertains to whether the plaintiff/petitioner herein can challenge the memorandum of partition dated 18.08.1982, and whether the said challenge would be within limitation, and the issue of declaration of Gift Deed dated 05.09.2005 as null and void.

20. This Court also notes that in order dated 21.01.2020, passed in CS (OS) No. 635/2019, the statement of learned counsel for defendant no. 1 therein/respondent herein was recorded that, though the defendant would maintain status quo in respect of the subject property, the same would be without prejudice to his rights and contentions to initiate legal proceedings against the plaintiff/ petitioner herein for eviction from the subject property. This Court had observed that such proceedings, if instituted, would be adjudicated on its own merits.

21. This Court is further of the opinion that there is merit in the contention of learned counsel for the respondent, that even in case the suit for possession

i.e. CS No. 872/2023 is decreed and the respondent comes in possession of the suit property, being the landlord, the same will not affect the rights of the petitioner herein, in the suit for partition pending before this Court, and if the petitioner succeeds in the said suit for partition, the subject property will become a subject matter of division. Further, in case the suit for partition qua the said property, pending before this Court, is dismissed, then the decree passed in suit for possession, pending before learned ADJ would prevail.”

20. Thus from the aforesaid authoritative final judgment passed by the Hon'ble High Court of Delhi, it is thus evident that the proposed issues no (ii) & (iii) are not in issue in the present suit which are in issue in the suit CS (OS) No 635/2019 titled Arun Kumar Jain Vs Padam Chand Jain & Ors pending before Hon'ble High Court of Delhi and are thus not required to be framed in the present matter.

21. The last proposed issue sought by the defendant i.e. (iv) Whether the present suit is barred under Section 50 of the Delhi Rent Control Act 1958? OPD. The defendant in the WS has taken the stand that the defendant is not the tenant qua the suit property who infact is the co-owner thereof. It is contended by the defendant that the family settlement dt 18.08.1982 nomenclatured memorandum of partition under which the predecessor in interest of the plaintiff was allocated the 3 properties including the suit property was got executed after the death of Sh Kundan Lal Jain under coercion where the father of the plaintiff was made to sign on dotted lines. It is further contended by the defendant that it was agreed between all the parties in the year 1982 that after the demise of Smt Sewa Devi all the 3 properties including the suit property would be equally divided amongst the three sons of Late Sh Kundan Lal Jain and also that during the lifetime of Smt Sewa Devi the parties in possession of the suit property will pay a nominal rent to Smt Sewa Devi. It is further contended by the defendant that

after the death of Smt Sewa Devi on 22.09.2010 the parties continued to occupy the respective portions as owners thereof and rent has been paid to Smt Sewa Devi till the date of her death by the father of the defendant. It is further contended by the defendant that the gift deed dt 05.09.2005 has been got executed by the plaintiff in his favour from Smt Sewa Devi without the knowledge of any member of the family and by practicing forgery and fabrication at the instance of the plaintiff and a substantive suit being CS (OS) no 635/19 titled Arun Kumar Jain Vs Padam Chand Jain & Ors has been filed by the defendant challenging the gift deed dt 05.09.2005. Thus as per the defendant the defendant is the co-owner of the suit property and not the tenant. The defendant in the entire WS has not contended anywhere that the defendant is a tenant with respect to the suit property. Even in the suit titled Padam Chand Jain vs Arun Kumar Jain bearing CS no 2605/2019, the WS of which has been admitted by the defendant, the defendant has claimed himself to be the owner of the suit property and has not admitted themselves to be the tenants thereof. Thus, in the considered opinion of the court, no issue is required to be framed qua Section 50 of the Delhi Rent Control Act since the defendant has not claimed tenancy in the present matter.

22. Hence in the considered opinion of the court, no other proposed issued is required to be framed. Hence, the present application filed by the defendant is hereby dismissed subject to cost of Rs 2,000/-.

Announced in the open court
on 20.01.2025

(Sachin Sood)
DJ-01 (Central)
THC, Delhi.