

IN THE COURT OF Ms. MEENU KAUSHIK: DJ – 03: NEW DELHI
DISTRICT: PATIALA HOUSE COURTS : NEW DELHI

CS No. 58565/16
CNR No. DLND010089022016



In the matter of:

Dr. Mrs. Meenakshi Dubey,
W/o Shri N.K. Dubey,
R/o A-11/25, 2nd Floor, Vasant Vihar,
New Delhi.

.....Plaintiff

Versus

- 1 Shri Pankaj Aggarwal,
S/o Late Shri K.K. Aggarwal,
- 2 Mrs. Indira Aggarwal,
W/o Late Shri K.K. Aggarwal,
Both R/o A-11/25, Vasant Vihar,
New Delhi

And At:
109, Withrow Avenue,
Toronto, Canada.

.....Defendants

Date of institution : 07.05.2015
Date on which reserved for judgment : 30.03.2026
Date of decision : 29.04.2026
Decision : Dismissed.

JUDGMENT

1 The present suit for seeking permanent injunction against the defendants with respect to rights of the plaintiff in the suit property and for declaring the gift deed dated 02.04.2012 executed by defendant No.2 in favour of defendant No.1 as null and void has been filed by the plaintiff against the defendants.

Plaint/Plaintiffs' version:

2 It is stated by plaintiff that she is the owner of entire second floor alongwith proportionate, undivided, indivisible and impartible ownership rights in the free-hold land underneath measuring 403 sq. yards bearing suit property No. A-11/25, Vasant Vihar, New Delhi. It is further stated that father of the plaintiff was lessor of the suit property which was allotted to him by virtue of perpetual sub-lease deed dated 12.02.1971 by the President of India through the Government Servants Co-operative House Building Society. It is further stated that father of the plaintiff had constructed only ground floor of the suit property out of his own funds during his life time and he expired on 29.05.1981 leaving behind plaintiff and defendants as his legal heirs. Defendants constructed the first floor of the property with the funds of father of plaintiff. After the death of father of plaintiff the property was mutated in the name of defendants. Plaintiff had signed relinquishment deed in favour of defendants for the purpose of mutation of the property on the assurance of defendants that she will have all equal proportionate rights in the above said property. It is further stated that on 21.07.1998 family settlement was arrived between

the parties and it was reduced into writing. As per family settlement, it was mutually decided that defendant No.2 shall own the ground floor, defendant No.1 shall own the first floor and plaintiff shall own the second floor of the property which was to be constructed. The plaintiff raised construction on the suit property. In the family settlement it was decided that the garage and the stair case shall remain common share equal by all the three parties. The right to entrance was to be from front gate for all the three parties. The plaintiff shall install electricity and water connection in the second floor of the property in her name and the plaintiff is owner of the second floor of the suit property by virtue of family settlement. One gift deed dated 23.12.2004 was executed by defendant No.1 on behalf of herself and on behalf of defendant No.2 in favour of the plaintiff gifting the second floor of the suit property to her and since then the plaintiff has been in physical possession of the second floor of the property and defendants delivered proprietary rights and symbolic possession of the said floor. The second floor of the suit property has been mutated in favour of plaintiff in the office of MCD vide letter dated 07.07.2005.

3 Defendant No.2 being old aged lady was having various old age ailments and was not under full senses since past several years and taking benefit of the same, defendant No.1 has taken away Rs. 2 Crores drawn to his account without being into knowledge of defendant No.2. Defendant No.2 called by of defendant No.1 who stayed with him in Toronto in March, 2011 and since then he has instigated her against the plaintiff as his intentions have become malafide since MCD had allowed to erect third floor. Therefore defendant No.1 is extending the threats to the

plaintiff to construct 3rd floor and to sell it off to some buyer to the exclusion of the plaintiff or to sell out the terrace right to some intending buyer to draw some undue benefit from the same. Defendant No.1 has managed and manipulated to get executed and register the gift deed on behalf of defendant No.2 in his favour and hence, the present suit for seeking permanent injunction against the defendants with respect to the rights of plaintiff in the suit property and for declaring the gift deed dated 02.04.2012 executed by defendant No.2 in favour of defendant No.1 as null and void.

Written Statement:

4 Written statement was filed by defendant No.1 wherein he denied various averments of the plaintiff. It is mentioned that the present suit is filed by plaintiff with the sole motive to extract money from the defendant. Father of the defendant died on 25.05.1981 leaving behind defendant No.1 & 2 and the plaintiff as his class I legal heirs. Plaintiff got married in the year 1983 and after her marriage oral family settlement was arrived at between the parties in terms of which the suit property fell to the share of defendant No.1 & 2 and they become the owners thereof in equal share whereas the residential plot measuring 250 sq. yards at Faridabad fell to the share of plaintiff and she became owner thereof. It is further stated that grandmother of defendant No.1 also executed a Will bequeathing her 1/4th undivided share in the suit property in favour of the defendant. It is further stated that oral family settlement was executed/ accepted by the plaintiff in her written statement as well as in evidence in Suit No. 794/1985 filed in the court of Senior Sub Judge, Delhi by the defendant against the plaintiff. It is further submitted that the

construction at the first floor, Barsati Floor and the second floor in garage in the suit property was carried out by the defendant out of their own funds and after seeking necessary permission and sanction from MCD. It is further stated that on 10.10.1994 the defendants entered into an agreement to sale and purchase with plaintiff in respect of the Barsati floor and open terrace on the second floor of the suit property for a total consideration of Rs.2 Lacs and the same was paid by plaintiff by way of cheque dated 02.09.1994 and the plaintiff was given possession of Barsati floor. It is further stated that in the said agreement to sell it was specifically provided that defendants shall always have the right to erect any construction on the third floor and above as and when they so desire and the plaintiff herein shall have no objection to the same. It was further agreed that in such a case, the terrace at the highest floor would be in common use of the parties and thereafter the plaintiff got constructed two more bedrooms and started staying therein. It is further stated that the defendant got the suit property converted from lease hold to free hold on 05.07.2004 and after that the plaintiff insisted on execution of a gift deed in her favour for the second floor of the property which was already transferred to her vide agreement to sell dated 10.10.1994. The gift deed was executed only for second floor of property by defendant No.2 on her behalf and on behalf of defendant No.1. It is further stated that plaintiff cannot claim any right beyond the second floor of the property as the agreement to sell dated 10.10.1994 clearly provide that the terrace above the second floor shall be the property of defendants and the common usage of second floor shall be shifted to the terrace of the top floor in the event the defendants decide to construct on the terrace of the second floor. It is further averred that plaintiff has no locus standi to file the instant suit

and in order to seek relief of injunction the plaintiff has to show that she has any right in the property which is going to be violated causing irreparable loss to her.

5 Defendant no. 2 also filed the written statement. She has also denied the various averments of the plaintiff as mentioned in the plaint. She has also stated that Agreement to Sell was executed by the plaintiff on 10.10.1994 with respect to the barsati floor of the suit property. It is further stated that the electricity connection on 02.02.1995 was obtained by the plaintiff on the basis of Agreement to Sell. It is also stated that the suit of the plaintiff is contrary to the clause 4 and 5 of the said agreement which specifically provides that defendants shall have right to carry any construction on the third floor or above or any portion thereof as and when they so desire.

Replication:

6 Replication was filed by the plaintiff to the written statements of defendant no. 1 and 2 wherein she reiterated her averments and denied allegations of the defendants.

Issues:

7 After completion of pleadings of parties following issues were framed:

- i) Whether suit of the plaintiff is not maintainable in the form presented? OPD2
- ii) Whether suit has not been valued properly for the purpose of pecuniary jurisdiction and court fees? OPD 1 & 2
- iii) Whether plaintiff is entitled to decree of permanent injunction restraining the defendants or any person acting through them from creating any third party rights or from carrying out construction in roof of

second floor in suit property No. A-11/25, Vasant Vihar, New Delhi and interfering in the plaintiff's common use of roof of second floor? OPP.

iv) Whether plaintiff is entitled to decree of declaration of the Gift Deed dated 02.04.2012 executed by defendant No.2/ mother in favour of defendant No.1/ brother qua half undivided share in the built up first floor, second floor roof and servant quarter on second floor garage with its roof in the suit property as null and void? OPP.

v) Relief.

Plaintiff's evidence:

8 Plaintiff has examined herself as PW-1 and tendered her evidence affidavit Ex. PW1/A which bears her signatures at points A and B and relied upon the following documents:

- i) Copy of second floor plan as Mark PW-1/A.
- ii) Copies of bills raised by various contractors who had worked on the construction of second floor of suit premises running into 21 sheets Ex. PW-1/2 (Colly).
- iii) Copies of proof of payments made by the plaintiff towards raising additional construction of second floor is Mark PW-1/A.
- iv) Copies of 16 documents as Mark PW-1/2A (Colly).
- v) Family settlement dated 21.07.1998 running into five sheets as Ex. PW-1/3.
- vi) Electricity bill as Ex. PW-1/4. (OSR).
- vii) Copy of gift deed dated 23.12.2004 as Ex. PW-1/5 (Colly).
- viii) Copy of letter dated 07.07.2025 as Ex. PW-1/6 (OSR).
- ix) Rough site plan of terrace as Ex. PW-1/7.
- x) Bank statement of ICICI Bank as Mark PW-1/7A (Colly).
- xi) Letter of DDA as Mark PW-1/7B.

x) Affidavit of Indira Aggarwal dated 09.02.2018 as Ex. PW-1/8.

xi) Marriage certificate of plaintiff is Ex. PW-1/9.

9 During the course of cross examination plaintiff stated that her father expired on 25.05.1981 and her marriage was solemnized on 01.02.1982 without the knowledge of defendants. She further stated that at the time of death of her father, mother of her father was alive. Plaintiff gave evasive reply by saying that she does not think if she ever went to the office of Sub Registrar for getting the relinquishment deed registered. Plaintiff admitted her signature at Point A & B of the relinquishment deed Ex. PW-1/DA and she also stated that at Point C also probably its her signature. She further admitted that her father owned a plot in Faridabad and after the death of her father the said plot was sold and proceeds of the same were used to buy a flat in Janakpuri for her. She stated that she does not remember the detail of the said flat. She further stated that she also does not remember that in the year 1985 a suit was filed against her in Tis Hazari Court in which she had appeared as a witness. She denied that no oral family settlement after execution of relinquishment deed was ever entered as she had given up all her right, title and interest in the suit property. She stated that her mother/ defendant No.2 had told her that for the construction the suit property was to be mutated in the name of defendant and after relinquishment deed also her interest and share would be given to her. She further stated that an agreement to sell was prepared by defendant No.1 but she does not know the details thereof and she further stated that at that time she was told that it was just a formality and there could be no actual sale. She admitted her signature at Point A on the last page of Agreement to Sell dated 10.10.1994 Ex. PW-1/DB but she stated that she is not sure about the signatures on the other pages. She

further stated that she does not remember as to if she never filed the alleged family settlement dated 21.07.1988 before any authority including for the purpose of taking electricity and water connection. She stated that she shifted at the second floor of the property in September, 1994 and before that she had obtained the electricity and water connection. She admitted that mutation dated 07.07.2005 in respect of second floor of the suit property in her name was only on the basis of registered gift deed dated 23.12.2004 and not on the basis of alleged family settlement dated 21.07.1988. She further stated that for registration of gift deed dated 23.12.2004 her mother went with her to the court and told her that defendant No.1 had also sent papers giving his consent to execute the gift deed. She admitted the email sent by her through email ID of her husband to defendant No.1 Ex. PW-1/DC. She further stated that she does not remember if the copy of registered gift deed dated 23.12.2004 was never given to the defendant. She denied that she and her husband persuaded Mr. Sunil Chadha to add averments in the gift deed which were beyond the contents of Special Power of Attorney dated 29.09.2004. She identified signatures of her mother at Point A to L on Ex. PW-1/5 (Colly) and at Point A & B on Ex. PW-1/A. She identified the photograph of her mother on the gift deed dated 20.02.2008 Mark PW-1/BD. She also identified the photograph of her mother on the first page of Family Will registered on 17.03.2010 Ex. PW-1/DE. She stated that Mr. Vivek Mittal is her first cousin. She admitted that after 1997 when defendant No.1 shifted to USA and subsequently to Canada, defendant No.2/her mother permanently resided in the first floor of the suit property and had a separate kitchen. However, she stated that her mother never had a full-time servant. She further stated that she could not find any permission to

be taken from the MCD to carry out the existing construction on the terrace of second floor. She identified her signature at Point A,B & C on the certified copy of relinquishment deed dated 05.06.1984 Ex. PW-1/DF. She stated that there is a toilet and a bathroom on the terrace of second floor of the property. Plaintiff in her cross examination did not show any document wherein it is mentioned that she had proportionate right on the terrace / roof of second floor and she only stated that since she is not a legal person she had no knowledge. However, she stated that the plaint in the present suit was drafted at her behest. She further stated that on the basis of family settlement dated 21.07.1998 Ex. PW-1/3 she is saying that she has proportionate right in the terrace/roof of the second floor. She further stated that she is also relying upon the oral family settlement between her and the defendants. She further stated that in document Ex.PW-1/3A there is no mention of any proportionate right in her favour on the roof of the second floor however, there is also no right specifically in favour of the defendants are there in the said document regarding the roof of the second floor. She further stated that regarding the other common area like drive-way, garage and stair case, they were to be shared equally by the plaintiff and defendants and the same is mentioned at page 3 of the document. When plaintiff was asked that the ownership of the suit property came to the defendants after execution of relinquishment deed dated 05.06.1984 Ex. PW-1/DF and thus there was no requirement of mentioning of any specific share of the defendants in the terrace on the second floor of the property in Ex. PW-1/3A family settlement, plaintiff stated that the status of ownership had changed as the second floor on the property was constructed by the plaintiff in the year 1994 prior to execution of family settlement Ex.PW-3A. She admitted

that she had never paid property tax in respect of the servant quarter adjacent to the second floor. She further stated that the roof has only fiber glass so no property tax is paid for the same. She also admitted that her mother used to rent out the servant quarter on the second floor. She further stated that as per the oral family settlement dated 30.05.1981 each of plaintiff and defendant had to get one floor in the suit property. When the plaintiff was asked that there could be no such oral settlement in the year 1981 as in the year 1981 MCD used to allow only ground and first floor in a residential building she stated that it was never discussed as to how much the MCD would allow to construct on the second floor. She admitted that she did not produce the family settlement dated 21.07.1998 either at the time of execution of gift deed dated 23.12.2004 or before any other authority for any other purpose. She admitted that in gift deed Ex. PW-1/5 there is no mention of Ex.PW-1/3A however, she stated that family settlement was relied at the time of execution of gift deed. She admitted that defendant had joint account at ICICI Bank, Vasant Vihar Branch however, she denied that she fraudulently obtained the bank statement of the defendant when defendant No.2 left for Canada on 27.03.2011. However, she stated that bank statement was obtained by her in absence of her mother. When plaintiff was put to the fact that defendant No.2 had left India on 26.03.2011 and the bank statement available with her is till 05.04.2011 and this suggests that the same was obtained when defendant was abroad, plaintiff stated that she does not remember as to if at the time of obtaining the bank statement her mother / defendant No.2 was in India or not. As per plaintiff the family settlement was got prepared on instructions of Mr. Sood who was an Advocate and family friend.

10 PW-2 Dr. N.K. Dubey proved his evidence affidavit as Ex. PW-2/A and relied upon the following documents:

- i) Copies of bills raised by various contractors who had worked on the construction of second floor of suit premises as Ex. PW-2/1 & Ex. PW-2/2 (OSR).
- ii) Copy of statement of loan given by witness to his wife to raise construction of second floor of property No. A-11/25, Vasant Vihar, New Delhi as Mark PW-2/A.
- iii) Copies of 10 National Saving Certificates maturity amount of which were used for the construction of floor in question as Mark PW-2/B (Colly).
- iv) Copy of proof regarding installation of electricity connection for the second floor of the suit premises from the concerned agencies as Ex. PW-2/3 (OSR).

PW-2 was cross examined at length and discharged.

11 PW-3 Mr. Sanjay produced certificate/letter Ex. PW-3/1 issued by Mr. Pramod Tripathi in relation to medical treatment of Mrs. Indira Aggarwal.

PW-3 was cross examined at length and discharged.

12 PW-4 Mr. Pramod Kumar, Assistant Manager in ICICI Bank, C-Block Market, Vasant Vihar Branch, New Delhi proved the statement of account from 01.06.2008 to 06.04.2011 of A/c No. 006501010441 in the joint names of Smt. Indira Aggarwal and Mr. Pankaj Aggarwal running into 24 sheets as Ex. PW-4/1 (Colly).

13 PW-4 in cross examination stated that as per their bank policy for issuance of bank statement a request letter is taken from the customer and in case the customer sent a representative/third party then authorization

letter from the customer alongwith ID proof is taken. He admitted that no stranger without proper authority and ID proof can take somebody-else's bank statement and otherwise it is being to have obtained fraudulently without adherence to the bank rules.

14 PW-5 Shri Syed Faizal Huda, Handwriting Expert proved his report dated 12.12.2016 alongwith its Annexures collectively as Ex. PW-5/A (Colly).

PW-5 was cross examined at length and discharged.

15 Defendant no.1 has examined himself as DW-1 and tendered evidence affidavit Ex. DWI/A which bears her signatures at points A and B and relied upon the following documents:

- i) Copy of Will dated 17.12.1984 executed by Smt. Jamna Devi bequeathing her share in the Vasant Vihar property in favour of defendant No.1 & 2 as Ex. DW-1/1.
- ii) Certified copy of judgment dated 16.07.1987 as Ex. DW-1/2.
- iii) Copy of bank pay-in-slip Ex. DW-1/3.
- iv) Copy of mutation letter dated 07.07.2005 in respect of the entire suit property except the second floor is Ex. DW-1/4.
- v) Copy of lease agreement in respect of let out of servant quarter on the second floor of the garage block by his mother is Ex. DW-1/5.
- vi) Copies of plaint and WS in Suit No. 794/85 as Mark D-1 & Mark D-2 respectively.
- vii) Death certificate of defendant No.2 is Ex. DW-1/6.

16 DW-1 in his cross examination admitted that oral family settlement arrived in 1983, however, the same was never put in writing as a written family settlement. He further stated that his mother expired on 17.11.2018 and her funeral and cremation were held on 19.11.2018. He

further stated that his mother was taking medications for her high blood pressure and Arthritis, both of which she had been suffering from many years before she moved to Canada. He further stated that no medical certificate of death was issued by the relevant authority in Canada as regard to death of his mother. He further stated that in Canada medical information is privacy protected and hence, as per his knowledge no document indicating cause of death was issued. He further stated that the paramedic who came in the morning of death of his mother told him that it was the cardiac arrest. He further stated that he is not aware of the laws that no funeral can take place in Canada without the certificate giving the cause of death by the concerned health authorities. He stated that no certificate giving cause of death was issued to him and he is not aware if any certificate giving the cause of death by the concerned authority was given directly to the funeral home. He further stated that withdrawing money from one's own account is no sign of depravity and he further stated that at the same time plaintiff had detailed discussion with defendant No.2 about using the second floor, servant quarter for her own use and this clearly shows that there was no sign of mental depravity at that time. He denied that when in March, 2011 he came to India and came to know about huge cash withdrawal from the account, he realized that his mother was not in proper state of mind and for this reason he took sudden decision to take her to Canada. He stated that his mother's decision to move to Canada was not all of sudden and since she was very upset with the behaviour of plaintiff and her husband she took the said decision. He further stated that on 05.02.2011 the money was transferred to M/s Geeta Travels and Tours towards the air fare for Canada and this shows that she was planning to move Canada even before the arrival of

defendant No.1 in March, 2011. He denied that defendant No.2 was showing signs of depression in the year 2007 and he further stated that in the year 2008 when he visited India after birth of his younger son, they celebrated the birth of his younger son and he has pictures showing defendant No.2 laughing at that time and which shows that she was far away from depression. He further stated that he had not seen the receipt of medical certificate of death – Form 16 shown to him Ex.DW-1/P1 till the time a copy of this was given to his counsel by the opposite counsel about one month back. He further stated that he does not remember seen statement of death Form 15 Ex. DW-1/P2. He further stated that it was the first time in his life to deal with the situation of death after having moved to Canada and he had no knowledge of the steps one had to take when faced with an emergency like that. He further stated that he followed the advise of “911 personnel” on what to be done at this stage. He further stated that when the coroner came upon the death of his mother, he asked as to if she was suffering from dementia and the coroner informed that they always asked such question when the person concerned is of an advance age. He further stated that he disagree with the suggestion that the doctor concluded that his mother was suffering from dementia and then the term NYD was mentioned which means “*not yet diagnosed*” and hence, in view of the doctor defendant No.2 did not have dementia. He further stated that he is not aware if dementia NYD and hypertension were pre-existing disease prior to death of his mother and she was treated in Canada for the same. He stated that his mother had hyper tension as a pre-existing condition however, dementia was never diagnosed and in medical certificate of death Form 16 it is mentioned that dementia “*not yet diagnosed*”. He further stated that medical certificate of

death Form 16 refers to death of defendant No.2 on 17.11.2018 and the medical condition of defendant No.2 which plaintiff refers regarding the gift deed in April, 2012. He further stated that since defendant No.2 had moved to Canada, she was managing her personal chores herself. He further stated that he recently become aware of the diagnose of her mother with “*mild frontotemporal dementia*”. He further stated that he recently became aware of this diagnosis of his mother and this seems to be a technical medical term which he is not conversant with. He further stated that he had received a phone call from Dr. A. Sood on 27.08.2019 when he mentioned that plaintiff had been in communication with him regarding his mother’s health because of which he did further investigations. He further stated that based on the investigation, Dr. A. Sood modified the medical certificate of death and modified the death certificate and removed the mention of dementia NYD from the modified certificate. He further stated that on asking of Dr. A. Sood, he applied for a copy of this revised medical death certificate and a document called “Corner’s Investigation statement”. He further stated that “Corner’s Investigation Statement” Ex. DW-1/P-3 alongwith covering letter dated 22.10.2019 Ex. DW-1/P-4 and modified medical certificate of Death Form 16 Ex. DW-1/P5 has been collected by him.

17 DW-2 Mr. Girish Pande tendered his evidence affidavit Ex. PW2/A. He deposed that he is an advocate by profession and was engaged as a counsel by defendant No.2.

DW-2 was cross examined at length and discharged.

18 DW-3 Mr. Kamal Khanna tendered his evidence affidavit Ex. PW3/A and deposed that Shri Pankaj Aggarwal and Mrs. Indira Aggarwal approached him to help them in the process of registration of General

Power of Attorney and a Gift Deed in the office of Sub-Registrar. He further stated that GPA and gift deed were signed and executed on 22.03.2012 and 02.04.2012 respectively.

DW-3 was cross examined at length and discharged.

19 DW-4 Mr. Manoj Kumar tendered his evidence affidavit Ex. PW4/A and deposed that on request of Mr. Vivek Mittal, he had accompanied him to house of Mrs. Indira Aggarwal at A-11/25, Vasant Vihar, New Delhi and after a brief interaction with Mrs. Indira Aggarwal, he alongwith Mr. Vivek Mittal visited the office of Sub Registrar at Kapashera where in his presence Mrs. Indira Aggarwal appended her signatures and her right finger and thumb prints on her own Will. Witness admitted his signatures on Will Ex. PW-1/DE.

DW-4 was cross examined at length and discharged.

Findings

20 I have heard arguments and considered the record carefully. My issue-wise findings are as under:

ISSUE No.1

Whether suit of the plaintiff is not maintainable in the form presented? OPD2

21 Onus to prove this issue was upon the defendant No.2, however, defendant no. 2 expired during pendency of the suit. Plaintiff in the present suit has sought permanent injunction against the defendants and their representatives from creating any third-party interest and from carrying out any construction above the terrace of the 2nd floor and further restraining the defendants from interfering the plaintiff with the common use and enjoyment of terrace of the 2nd floor of the subject property.

Plaintiff has further sought declaration declaring the gift deed dated 02.04.2012 executed by defendant No.2 in favour of defendant No.1 with respect to half undivided share in the entire built up of 1st floor, 2nd floor, roof and servant quarter on the 2nd floor of garage with its roof on the subject property as null and void and to cancel the same.

22 It is contended by ld. counsel for defendant No.1 that suit for permanent injunction claiming injunction with respect to terrace of 2nd floor is not maintainable as plaintiff has not sought the declaration of her title with respect to the terrace of the 2nd floor. As per defendant No.1, plaintiff has claimed her title over the roof of second floor by way of family settlement dated 21.07.1998 however, the fact is that the same stand automatically obliterated as parties have voluntarily abandon it and never acted upon for 13 years i.e. from the year 1998 to 2011. It is further claimed on part of defendant No.1 that conveyance deed of the subject property was executed on 05.07.2004 in favour of defendants and the plaintiff was witness to the execution of conveyance deed and the same nullify the alleged family settlement. It is further stated that family settlement allegedly executed in the year 1998 is seriously a disputed document as the same was never intended to be so and the same was signed only on the insistence of plaintiff for being used before DDA to save the stamp duty and since sale / transfer in the year 1998 never materialized, it had to be destroyed but plaintiff dishonestly concealed it from the year 1998 to 2011 and misused the same in the year 2011 at the time of filing of the present suit. It is further stated that the genesis of plaintiff's claim in the subject property in her plaint is on the basis of gift deed dated 23.12.2004 Ex. PW-1/5 and not by the family settlement. It is

further stated that the gift deed dated 23.12.2004 is nowhere explicitly or out-rightly conveying any terrace right to the plaintiff, yet by way of present suit the plaintiff has claimed only permanent injunction and not the title. It is further argued that it is settled law that a title document conveys only that right / title which the document mentions, and extent of right cannot be expended, enlarged or supplemented merely on intention of parties without expressed words in the deed. Ld. counsel for defendant has relied upon *Naseem Kahnani & Others Vs. Zaheda Begum & Others [(2024) 7 SCC 245]* to support his contentions wherein it was observed that “...question is not that what parties to the deed may have intended to do by that deed, but what is the meaning of the words used in the deed. ...”

23 It is further stated that since the prayer of permanent injunction of the plaintiff is based upon family settlement dated 21.07.1998 and the same is seriously disputed / redundant document, permanent injunction cannot be claimed without first seeking declaration and the permanent injunction can be claimed only as a consequential relief. Ld. counsel for defendant has relied upon *Anathula Sudhakar Vs. B. Buchi Reddy [(2008) 4 SCC 5941]* wherein it was held that when the title of plaintiff is under dispute or defendant asserts his title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction.

24 It is further stated that gift deed dated 23.12.2004 Ex. PW-1/5 is a registered document and the same is also admitted on part of the plaintiff and hence, the same cannot be obliterated, nullified or substituted by a prior document unless it is satisfied by a legal process. It is further

claimed that gift deed Ex. PW-1/5 is the only title document that gives rise the title and interest to the plaintiff over the second floor and the same would automatically obliterate the prior documents and thus, the suit of the plaintiff for permanent injunction is not maintainable in absence of prayer for declaration. It is further argued that relief of declaration has now become time barred as it was imperative for the plaintiff to have claim the relief of declaration immediately after the delivery of defence by the defendant subject to limitation.

25 With respect to the relief of declaration for gift deed dated 02.04.2012, it is contended that plaintiff was never in possession of the ground floor and first floor of the property and therefore it was imperative for the plaintiff to have claimed the relief of **“recovery of possession”** as the necessary relief without which the claim simplicitor for declaration viz. a viz. gift deed is not maintainable. Reliance is placed upon on ***Arulmigu Chokkanatha Swamy Koil Trust v. Chandran*** [(2017) 3 SCC 702] **and *S. Santhana Lakshmi & Others v. D. Rajamma***(2025 SCC OnLine SC 2145).

26 In the family settlement dated 21.07.1998 it is mentioned that the plaintiff shall be sole owner of the second floor portion of the said premises consisting of one drawing dining, 3 bed room, 3 bathroom, one kitchen and one store. It is further mentioned that the drive way, garage and the staircase shall remain common shared equally by all the three parties and the right to entrance shall be from the third gate for all the parties.

27 In the gift deed Ex. PW-1/5 it is mentioned that the donors /defendants got the sub lease hold right of Plot No. A-11/25, Vasant Vihar

converted into free hold in their names through DDA vide conveyance deed dated 05.07.2004 duly registered on the same date and had agreed to transfer the entire second floor of the said property alongwith proportionate undivided, indivisible and impartible ownership right in the free hold land underneath measuring 403 Sq. Yards by way of gift to the donee/plaintiff. It is further mentioned that the transfer conveyed the assignee the said portion of the said property i.e. “...entire second floor with super structure alongwith all the free hold right, title, interest, easement and privilege alongwith the sanitary and electrical installation, fixtures and fittings whatsoever appurtenant to the said portion of the said property....”. It is further mentioned that “the donee shall have a right to use all entrances, passages, staircase and other common facilities as are available in the said building. It is also mentioned that in the event of building being damaged or not remaining in existence or any account whatsoever,... the donee shall have the proportionate right in the land alongwith other owners of the building and shall have right to raise construction in proportion to the one as now being gifted, conveyed and being transferred under the gift deed.”.

28 Plaintiff has never challenged the gift deed Ex.PW-1/5. In the gift deed it is no where mentioned that the plaintiff was gifted with the roof rights of the third floor or that she was entitled to one-third of the roof rights along with the defendants.

29 Plaintiff has tried to interpret the language of gift deed in her favour by contending that by way of gift deed, she was declared one-third owner of the subject property and thus, she would be entitled to one third share in the whole built up property whatsoever including the roof

rights. From the language of the gift deed, it is ample clear that in case of any fall or any other eventuality, plaintiff shall be entitled to raise construction in the property in the portion as gifted and conveyed by way of gift deed Ex.PW-1/5. In the said gift deed only the second floor of the property with super structure alongwith all the free hold right, title, interest, easement and privilege alongwith the sanitary and electrical installation, fixtures and fittings whatsoever appurtenant to the said portion of the said property. It is nowhere mentioned that the plaintiff shall have any roof rights in the subject property. By way of gift deed Ex.PW-1/5 whatever was provided was with respect to the second floor of the property and nothing is mentioned regarding and proportionate roof rights of the plaintiff. Thus, plaintiff cannot have any right in the subject property beyond what was conveyed to her by way of gift deed. Moreso, it is admitted fact on part of the plaintiff that the conveyance deed of the subject property was executed in favour of the defendants. Thus, after the execution of conveyance deed, defendants were the sole owners of the subject property. In view of execution of conveyance deed in the year 2004, the alleged family settlement executed in the year 1998 also become redundant and after the execution of conveyance deed, plaintiff can now claim her any right in the suit property only by way of the gift deed executed in the year 2004 after execution of the conveyance deed. Thus, when it is not clearly mentioned in the gift deed that the plaintiff by virtue of gift deed Ex. PW-1/5 itself had one third right/ title in the terrace over the second floor of the property, she cannot seek any injunction with respect to the same without seeking title rights in the terrace above the second floor of the suit property. Accordingly, present suit seeking injunction against the defendant no.1 with respect to the terrace rights is

not maintainable in view of the law laid down in *Anathula Sudhakar (Supra)*.

30 By way of gift deed dated 02.04.2014 defendant no.2 had gifted her undivided share in the first floor, second floor's terrace and servant quarter on the second floor of garage with its roof to defendant no.1. Plaintiff admittedly not in possession of the first floor of the property and in the servant quarter. With respect to relief of seeking cancellation of the gift deed executed by mother of the plaintiff in favour of defendant no.1, the plaintiff in addition to seeking cancellation needs to seek possession as well. Here reliance is placed on *Arulmigu Chokkanatha Swamy Koil Trust v. Chandran*, (2017)3SCC702, wherein it was held that declaratory suit without seeking recovery of possession is not maintainable when plaintiff is not in possession. Thus, it is held that the present suit is not maintainable in the present form. Accordingly, present issue is decided against the plaintiff.

ISSUE No.2

Whether suit has not been valued properly for the purpose of pecuniary jurisdiction and court fees? OPD 1 & 2

31 Onus to prove this issue is upon the defendants. This issue is not pressed by the defendant no.1 during the course of arguments and thus, decided in favour of the plaintiff.

ISSUE No.3

Whether plaintiff is entitled to decree of permanent injunction restraining the defendants or any person acting through them from creating any third party rights or from carrying out construction in roof of second floor in suit property No. A-11/25, Vasant Vihar,

New Delhi and interfering in the plaintiff's common use of roof of second floor? OPP.

32 Onus to prove this issue is upon the plaintiff. It is the contention of ld. counsel for defendant No.1 that the plaintiff has no right on the terrace as per the title document i.e. gift deed Ex. PW-1/5 and thus permanent injunction cannot be claimed by the plaintiff. It is further contended that plaintiff has claimed permanent injunction on the basis of family settlement dated 21.07.1998 which in itself is doubtful and stood discarded after execution of the gift deed dated 23.12.2004. It is further claimed that family settlement in writing should be registered unless it is mere memorandum of past settlement. It is further claimed on part of the defendant No.1 that the said document was prepared by the plaintiff just to show the sale transaction with respect to second floor to get the stamp duty exempted.

33 In the family settlement Ex.PW-1/3 there is mention of the oral settlement date as 30.05.1981 however, the fact is that father of plaintiff allegedly expired on 25.05.1981 and at that time only ground floor was constructed in the property and admittedly he had left no Will expressing any desire that his wife and two children may share the subject property. During cross examination of plaintiff, it has come on record that as per family settlement plaintiff had voluntarily taken Faridabad property exclusively to herself and the suit property fell exclusively to defendant No.1 & 2 and the plaintiff has executed a relinquishment deed Ex. PW-1/DA and Ex. PW-1/DF. It is further claimed on part of defendant that in the year 1981 the property was built upto single story and the floor-wise construction was not permissible by MCD and hence, alleged

oral settlement of giving one floor each to the plaintiff and defendants was not possible. In view of relinquishment deed dated 05.06.1984 as the plaintiff had already given up her right in the suit property, the possibility of preparation of memorandum of past oral family settlement in the year 1998 as Ex.PW-1/3 with respect to suit property is doubtful. The contentions on part of defendant no.1 that in the year 1981, any construction of the second floor was not permissible by the MCD and thus, the family settlement of giving one floor each to the plaintiff and the defendants cannot be accepted is found tenable. Further, receiving of property at Faridabad by the plaintiff is nowhere mentioned in the alleged family settlement of the year 1998 and this further raises doubt as to if the same is mere memorandum of past oral settlement. As relinquishment deed was executed in the year 1984 with respect to the subject property, then any settlement for dividing the shares by plaintiff and defendants in the subject property in past became redundant on execution of any subsequent relinquishment deed. Accordingly, if any further settlement had been arrived between the parties the same cannot be termed as oral settlement arrived in the year 1981. It is not mentioned in the family settlement as to if any oral settlement was arrived between the parties after execution of relinquishment deed in the year 1984. Thus, the family settlement of the year 1998 cannot be considered as memorandum of past oral settlement. *Accordingly, as per the mandate of u/S 17 (1)(b) of the Registration Act, the family settlement of the year 1998 needs to be registered. In absence of registration of the family settlement, the plaintiff cannot claim any right in the suit property by virtue of the same.*

34 To add further interest in the chain of execution of documents, the conveyance deed of the subject property was executed in the year 2004 i.e. after execution of the alleged family settlement. The conveyance deed of the subject property was executed in favour of the defendants only and subsequent to the conveyance deed, one gift deed Ex.PW-1/5 was executed giving right to the plaintiff in the second floor of the suit property. *Since conveyance deed and gift deed were executed in the year 2004 with respect to the suit property, the alleged family settlement of the year 1998 automatically stood discarded by the parties leaving redundant and ineffective.*

35 Execution of Agreement to Sell dated 10.10.1994 Ex. PW-1/DB is not denied by the plaintiff and this further shows that there was no former family settlement which later reduced into writing in the year 1998. Consequently, this fact strengthens the claim of defendant no. 1 that the said family settlement was executed only to save the stamp duty by the plaintiff and that there was never such any family settlement arrived. Plaintiff has sought permanent injunction only on the basis of family settlement allegedly taken place on 21.07.1998 on the basis of past oral settlement. But execution of agreement to sell in the year 1994 and then conveyance deed in the year 2004 makes the existence/ validity and the enforceability of the alleged family settlement doubtful.

36 At the time of deciding issue no.1 it has already been observed that the gift deed of the year 2004 Ex.PW-1/5 does not confer any title/ right or ownership to the plaintiff in the terrace of the second floor of the subject property. Hence, the plaintiff has been failed to prove her title/ ownership rights with respect to any portion of the terrace of second

floor. Accordingly, it is held that the plaintiff cannot claim injunction against the defendant no.1. Thus, present issue is decided against the plaintiff.

ISSUE No.4

Whether plaintiff is entitled to decree of declaration of the Gift Deed dated 02.04.2012 executed by defendant No.2, mother in favour of defendant No.1 brother qua half undivided share in the built up first floor, second floor roof and servant quarter on second floor garage with its roof in the suit property as null and void? OPP.

37 Onus to prove this issue is upon the plaintiff. Plaintiff in her original plaint has claimed that her mother/defendant No.2 was not to be in full senses for last few years and has alleged that defendant No.1 took advantage of her “*indisposition*” to transfer Rs.2 Crores from her account without her knowledge and after that defendant No.1 called her mother/defendant No.2 to Toronto and then he polluted and spoiled the mind of defendant No.2. In her amended plaint, plaintiff added Para No. 15A, B & C and challenged the gift deed mentioning that the executor of the gift deed i.e. defendant No.2 was managed and manipulated to register and execute the gift deed and due to old age ailments, she was not in full senses for last many years even before shifting to Toronto in March, 2011. It is claimed that defendant No.2 was not possessing good health and sound disposing mind. It is further claimed by plaintiff that defendant No.2 was not holding exclusive right over terrace floor and servant quarter on the second floor of garage portion and thus the gift deed with respect to same was claimed to non est and void.

38 Ld. counsel for defendant No.1 has contended that averments of plaintiff in her plaint are general and vague and bereft of material particulars and no plea for domination for control or influences nor any plea or instances that defendant No.2 was in a position dominated by anyone/ defendant No.1 is mentioned by the plaintiff. Reliance in this regard is placed on *Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd.* (AIR 1963 SC1279) where it is held as under:

“A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other”.

39 Reliance is also placed on *Raja Ram v. Jai Prakash [(2019) 8 SCC 701]* where it is held as under:

“There can be no application of the law sans the facts of a case. The primary ingredients of the law need to be first established by proper pleading supported by relevant evidence. Cases cannot be decided on assumptions or presumptions”.

40 It is further argued on behalf of defendant No.1 that present suit was filed by the plaintiff against defendant No.2 and since plaintiff has claimed that defendant No.2 was under undue influence and was not in her senses, plaintiff ought to have sued defendant No.2 through next friend under order 32 Rule 10 of CPC and as such there is serious lapse on part of plaintiff which renders the allegations of plaintiff doubtful. It is further argued that it has remained unexplained on behalf of plaintiff as to if she had believed that defendant No.1 was mentally not fit to take decision and of unsound mind due to age then why she had not sued her through next friend even before amendment in the plaint.

41 It is further contended on part of defendant No.1 that during cross examination to Question No.77, plaintiff stated that she had spoken to defendant No.1 in Dwarka Court at the time of attending hearing in the suit and at that time she was mentally and physically sound. It is further contended that defendant No.2 had hired her own counsel and had filed her separate written statement dated 06.04.2015 wherein she has mentioned that she is mentally and physically fit to sign and she has shifted to Toronto with her son out of her own free Will as she was depressed and troubled by plaintiff in Delhi and she executed impugned gift deed dated 02.04.2012 out of her own volition and also appeared before the Sub Registrar. It is further contended that the written Statement filed by defendant No.2 in itself nullified the allegations of the plaintiff and proves that defendant No.2 was acting independently and was in sound physical and medical condition in the year 2011 and also in the year 2015.

42 It is also contended on part of defendant no.1 that merely because parties were nearly related to each other, no presumption of undue influence can arise and a vague or general plea can never serve the purpose and the party pleading must therefore be required to plead the precise nature of influence. Here reliance is placed upon by ld. counsel for defendant No.1 on ***Subhash Chander Dass Mushib v. Ganga Prasad Dass Mushib*** (AIR 1967 SC 878).

43 The plaintiff in her cross examination has deposed to Question No. 40 & 41 that defendant No.2 was staying alone from 1997 to 2011 on the first floor with separate kitchen and she had no servant. From the deposition of plaintiff itself shows that defendant No.2 was capable

enough to take care of herself and was of sound mind when she shifted to Toronto with defendant No.1. It is not denied on part of plaintiff that defendant No.2 used to independently deal with the tenant and lease deed dated 11.04.2010 Ex. DW-1/5 was got executed by Defendant No.2 herself. It is further admitted on part of plaintiff in her cross examination in answer to Question No. 82 and 82 that in or about July, 2010 when husband of plaintiff fell sick, defendant No.2 on her own volition handed over the keys and permitted the plaintiff to use the servant quarter and this further shows that defendant No.2 was capable of taking rational decisions. The three stages for consideration of a case of undue influence were expounded in the case of ***Raghunath Prasad v. Sarju Prasad & Ors*** 51 I.A. 101 [51 (Indian Appeals) 101] in the following words:

“In the first place the relations between the parties in each other must be such that one is in a position to dominate the Will of the other. Once that position is substantiated the second stage has been reached namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in I position to dominate the will of the other.

Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate the will of the other?”

44 It is contended on part of defendant no.1 that Defendant No.2 went to Canada on 26.03.2011 and returned to India on 31.08.2011 and after 32 days she again left for Canada on 02.10.2011 and then came back in the year 2012 and the copy of her passport Ex. PW-1/DG also shows that defendant No.2 was physically and mentally fit. It is further claimed that

air ticket for travel to Canada was bought by defendant No.2 herself and she herself had made payment to Geeta Travels and the same is reflected in her bank statement.

45 It is further contended that defendant No.2 had executed gift deed dated 23.12.2004, 20.02.2008 and then executed Will dated 16.03.2010, Ex. PW/1/DE bequeathing her remaining undivided share in suit property to defendant No.1 and that she also executed GPA Ex. DW-1/DH in favour of her son on 22.03.2012 and the impugned gift deed dated 02.04.2012 is in continuation of series of act reflecting the independent mind set and voluntariness of defendant No.2 and hence, the allegations of undue influence or unsoundness of mind remains not proved.

46 The contentions on behalf of defendant No. 1 are found acceptable that execution of various of documents by defendant No.2 are part of same series of her acts and when the other documents are not objected by the plaintiff, ground for challenging the gift deed executed in the year 2012 is only due to the fact that the same is being challenged as defendant no.1 is made beneficiary.

47 It is further contended that GPA dated 22.03.2011 and impugned gift deed of 2012 are witnessed by Mr. Kamal Khanna and he is examined as DW-3 who deposed regarding sound state of mind of defendant No.2. Testimony of DW-3 strengthens the contentions of defendant No.1.

48 To prove the issue No.4, plaintiff was required to adduce positive evidence with respect to the fact that defendant No.2/mother was suffering from old age ailments and was not in full senses and incapable of contracting at the relevant time i.e. during the year 2012 however, larger part of evidence of plaintiff is related to death of defendant No.2 on

17.11.2018 and the cause of her death. The plaintiff has heavily relied upon the certificate of death of defendant No.2 where under the column “*other significant condition contributing to death but not related to immediate cause above*” mentions that she was suffering from “DEMENTIA NYD”. Defendant no.2 was expired in the year 2018 and thus, prima facie the cause of death is not relevant for the purpose of deciding whether defendant No.2 was in sound state of mind in the year 2012 or not. It is contended on part of defendant no.1 that “DEMENTIA NYD” in itself does not prove the mental condition of mother in the year 2012 and hence, the same is not relevant.

49 As per section 114 of Indian Evidence Act, there is presumption with respect to soundness of mind rather than unsoundness and the plaintiff was supposed to must rebut the presumption as the burden of proof and initial onus to prove the fact of insanity and unsoundness of mind is upon the person who challenges the same.

50 The legal presumption of genuineness is also in favour of registered document u/S 114 of Indian Evidence Act and the same can be rebutted by leading evidence by the attacker/plaintiff herein.

51 It is admitted fact that the plaintiff and the defendant No.2 used to live in the same property till the time she shifted to Toranto i.e. till the year 2012. No cogent documentary evidence/ medical documents of defendant no.2 are placed on record of the relevant time by the plaintiff to show that she was not in sound state of mind at the time of execution of gift deed in the year 2012. Plaintiff being daughter of defendant no.2 and as she was residing in the same property where defendant no.2 was residing was expected to have documents of medical history of her

mother. To add further interest, surprisingly, plaintiff has not claimed unsound state of mind of defendant no.2, till the time she was not aware of the gift deed got executed by defendant no.2.

52 Further, as per defendant no.1 certificate of death was revised subsequently whereby mention of “Dementia NYD” was completely removed. It is further contended on part of defendant no.1 that the overseeing doctor wrote in “Coroner’s Note” that even at the time of her death in November 2018, defendant no.2 only had “*mild fronto temporal dementia*”. It is further contended that as the same was of so mild nature that made him remove any mention of it from the certificate of death. The plaintiff has not made any objection to the removal of Dementia NYD later on by the concerned authority. Otherwise also, medical condition of defendant no.2 after six years of execution of the impugned gift deed i.e. before her death is not much relevant.

53 The averments of the plaintiff with respect to unsoundness of mind of defendant no.2 are general and vague as plaintiff has only stated that defendant no.2 was suffering from old age ailments and was not in full senses and not in sound disposing mind. Plaintiff has failed to place on record any cogent documentary evidence to prove her claim that defendant no.2 was not in full senses or in sound disposing mind at the time of execution of impugned gift deed. Admittedly, till the time shifting of defendant no.2 to Canada she was residing separately on different floor of the same property without any full time domestic help and defendant no.2 herself had handed over the keys of servant room to the plaintiff when her husband was not well. These depositions on part of the plaintiff are contrary to her claim regarding the mental state of plaintiff at the

relevant time.

54 Considering the fact that plaintiff has not made any averment in her plaint with respect to any specific ailment of defendant no.2, nor adduced any cogent evidence that defendant no.2 was suffering from dementia and/or that she became incapacitated because of the same for execution of the impugned gift deed and in view of observation made at the time of deciding issue No.1 & 3 with regard to ownership rights, it is concluded that the plaintiff has been failed to discharge the burden of proof with respect to the present issue. Thus, present issue is decided in favour of defendant no.1 and against the plaintiff.

Relief:

55 In view of the above discussed facts and as the issue no. 1, 3 and 4 are decided against the plaintiff, the suit of plaintiff is dismissed. Application of defendant No.1 u/S 35 of the Indian Stamp Act, 1899 also stands disposed of in view of observation made at the time of deciding issue No.3. No order is passed with respect to costs.

56 Decree sheet be prepared accordingly.

57 File be consigned to the Record Room after due compliance.

*(Announced in the open Court
on 29th April, 2026)*

(Meenu Kaushik)
District Judge-03
Patiala House Courts, New Delhi District
New Delhi