

CS DJ 203/2023

Davender Sareen Vs Ashwani Kumar Sharma

16.08.2024

Present: None.

1. Submissions have been heard on the injunction application of the plaintiff. File is perused.

2. The brief facts necessary to deal with the interim injunction application are that the plaintiff has filed the present suit seeking decree of declaration in his favour thereby declaring a Gift Deed dated 21.09.2021 executed by Smt. Kamal Sareen as illegal, null and void and not binding upon him or anybody else. The plaintiff is seeking decree of permanent injunction thereby restraining the defendant from selling, disposing off, alienating, transferring creating charge, lien or creating any third party rights, title and interest or part with possession in any manner in respect of property no. 255, Front Portion, First Floor, Bharat Nagar, Delhi and also decree of its possession. It is averred by the plaintiff that her mother Smt. Kamal Sareen was married to Sh. Gopal Krishan and defendant was born out of the said wedlock. It is averred that subsequently, the marriage was dissolved by decree of divorce and she solemnized her second marriage with Sh. Ramesh Chander Sareen. It is averred that out of said wedlock, plaintiff and one of his brother Prabhat Sareen were born out. It is averred that Sh. Prabhat Sareen separated from family in 2010 after taking his due share in all the movable and immovable properties and assets of the parents of the

plaintiff after executing an Undertaking dated 09.02.2010. It is averred that father of the plaintiff has expired on 18.09.2013 and mother has expired on 21.01.2023. It is averred that father and mother of the plaintiff have left behind their respective Wills dated 04.08.2011 and 16.12.2016.

3. It is averred that father of the plaintiff was working and was drawing handsome salary whereas mother continued to be house wife till her death and had no source of income of her own and had no resources to earn any income and even used to run the household from the financial support of father of plaintiff and was totally dependent upon him. It is averred that in September 2010, it was decided between parents of the plaintiff, his brother and himself that whatever movable and immovable properties and assets would be purchased by the mother of the plaintiff after his death, the same shall devolve solely and exclusively upon the plaintiff only and no one else shall have right and claim in the same.

4. It is averred that mother of the plaintiff purchased a built up property no. 255, Front Side, First Floor, Bharat Nagar, Delhi for a valuable sale consideration of Rs. 8,45,000/- and payment of sale consideration was made through a cheque of Rs. 8,10,000/- dated 30.05.2015 and the account for which the same was paid, was from the funds and account of father of plaintiff held jointly with his wife Smt. Kamal Sareen. It is averred that Smt. Kamal Sareen later on after the death of father of plaintiff had transferred all the proceeds, amount lying in the joint account into her account to which plaintiff did not raise any objection in

view of the decision taken by all of them in September 2010. It is averred that father as well as mother of the plaintiff have bequeathed all their properties in favour of plaintiff by executing Will dated 04.08.2011 and 16.12.2016 respectively.

5. It is averred that Smt. Kamal Sareen started residing with plaintiff at his residence at Ashok Vihar and he was looking after the needs and welfare of his mother. It is averred that with the passage of time, she had become pale and weak due to old age despite the fact that plaintiff was taking care of her in all respect to the exclusion of other defendants. It is averred that her sense to understand and recollect was diminishing with the passage of time and she used to forget as to what she was doing and its implications and that her eye sight become weak and she was not able to see correctly as was suffering from cataract from both the eyes. It is alleged that in second week of July 2021 when the plaintiff was away to court due to his professional work and his wife and children were at home, defendant came to his house and forcibly took away the mother of the plaintiff from there despite request and objections of the wife of plaintiff and children. It is averred that the plaintiff immediately rushed to his house on receiving the information but by the time, he could reach home, the defendant had taken away the mother of the plaintiff from his house in his absence. It is averred that defendant did not give satisfactory reply for the same when a telephone call was made rather shouted at him and warned him not to interfere in his affairs. It is averred that the plaintiff even tried to call his mother on telephone but every time, he called the

mobile phone was always switched off and defendant did not allow the plaintiff to talk to her. It is averred that after great persuasions and ultimately on the intervention of the family members and relatives, it was decided that for some days, the mother of plaintiff would stay with him and for some days, she would stay with the defendant on rotational basis. It is averred that in the first week of August 2021, the mother of plaintiff started staying with him and he took care of each of her needs and in the first week of September 2021, she returned back to the defendant. It is averred that the mother of the plaintiff during her stay with the plaintiff was trying to say and divulge something or convey some information to him but she could not do so and his wife also tried to talk to her but some kind of fear was gripping her and she was not able to come out openly and give details to the plaintiff as to what she wanted to say to him and the same remained a secret only. It is averred that the defendant had taken her with him in October 2022 as per the arrangement made and that despite assurance, he did not take care of her during her stay with him and completely made her a nervous wreck. It is averred that after the death of mother, it was revealed to him by the people in the neighbourhood and residing in the vicinity that the defendant had not been treating the mother of the plaintiff well and was treating her casually and with cruelty and maltreating her, cajoling her and was not looking after her needs, comforts and had not provided her medical needs, food etc also with the result that she was hospitalized. It is averred that the reason of the death of mother of plaintiff was never disclosed to him by the

defendant on 21.01.2023 and the same is still a mystery to the plaintiff.

6. It is averred that after the Chautha ceremony, the defendant started boasting among his relatives that the mother of the plaintiff has transferred the house no. 255, First Floor, Bharat Nagar, Delhi in his name and plaintiff was shocked to hear the same and he confronted the defendant and inquired from him as to how he got the said property transferred in his own name from the mother of the plaintiff and she had no independent and absolute right to transfer the property and also had no intention to transfer the same in any manner to the defendant which she had repeatedly told to the plaintiff during her stay with him. It is averred that upon inquiry, the defendant meekly told the plaintiff that the property was transferred somewhere in the last week of September 2021 by getting an alleged Gift Deed from the mother of the plaintiff and that plaintiff was shocked and stunned to hear it from the mouth of the defendant. It is averred that on coming to know the fact and apprehending further that the defendant might indulge in some overt act to sell and dispose off the property to third party, thereby jeopardizing the rights and interest of the plaintiff, he wrote and delivered a letter dated 31.01.2023 to the Sub Registrar, Pitampura not to transfer the property. It is averred that after the performance of Tehrivi of his mother on 02.02.2023, the plaintiff further made discreet inquiries into the matter in the Office of Sub Registrar, Pitampura and came to know that the alleged Gift Deed had been got registered by the mother of plaintiff in favour of defendant on

21.09.2021. It is claimed that mother of plaintiff had got no independent and absolute right, title and interest to transfer the property by way of alleged Gift Deed in favour of defendant and moreover in view of Will dated 16.12.2016, executed by her whereby she had already bequeathed the property to the plaintiff.

7. The plaintiff by way of present application is praying for passing of an order thereby restraining the defendant, his henchmen, attorneys, associates, heirs, successor etc from selling, alienating, transferring, creating charge, lien or creating any third party rights, title and interest or part with possession in any manner in respect of aforesaid property till final decision of the suit. It is claimed that plaintiff has a good and strong prima facie case in his favour and he is most likely to succeed in the suit filed by him and that the balance of convenience also lies in his favour. The plaintiff has placed reliance upon 2011 DHC 5900, Keshav & Ors Vs Gian Chand & Anr, Civil Appeal no. 364 of 2022 decided by Hon'ble Supreme Court of India on 24.01.2022 and Sonamati Devi Vs Mahendra Vishwakarma & Ors, Civil Appeal no. 5717 of 2021 decided by Hon'ble Supreme Court of India on 15.09.2021 and 2024 AHC-LKO 13664.

8. On the other hand, the contentions of the plaintiff are refuted by the defendant with the averments that suit is nothing but a baseless attempt of the plaintiff to grab the property which is already transferred by way of duly executed Gift Deed by Smt. Kamal Sharma @ Kamal Sareen who was its actual owner in absolute possession. It is contended that the suit is bad for non joining of Sh. Prabhat Sareen as the necessary party being real

son of Sh. Ramesh Chander Sareen and Smt. Kamal Sharma @ Kamal Sareen. It is averred by the defendant that plaintiff has not been born out of the wedlock of Ramesh Chander Sareen and Smt. Kamal Sharma @ Kamal Sareen and infact, he was born out from the wedlock between Smt. Kamal Sharma @ Kamal Sareen and Gopal Kirshan Sharma (biological father of both the parties). It is alleged that such conduct of the plaintiff amounts to be playing fraud with the court. It is contended that at the time of separation of Kamal Sharma @ Kamal Sareen and Gopal Kirshan Sharma, the plaintiff was nine years old and since the plaintiff was younger to defendant, she put him with herself out of love and affection for being her younger son and defendant was left with his father.

9. It is averred that plaintiff is occupying the property bearing no. D-52, Second Floor, DDA Flat, Ashok Vihar, Delhi despite the orders dated 23.10.2009 passed by the Hon'ble High Court of Delhi in CM(M) 1499/2007 wherein a decree of possession was passed in favour of Sh. Ramesh Chander Sareen and that the plaintiff thrown out Sh. Ramesh Chander Sareen and Smt. Kamal Sharma @ Kamal Sareen from the said house and they started living in the rented premises at House No. 240, Bharat Nagar, Delhi. It is averred that after the death of Sh. Ramesh Chander Sareen, Smt. Kamal Sharma @ Kamal Sareen purchased the said property vide registered sale deed duly executed on 30.05.2014. It is averred that the defendant was regularly visiting his mother since the beginning and even after 2010, therefore he was only the person who help her mother to

buy the property out of the joint funds of Smt. Kamal Sharma @ Kamal Sareen and the defendant. It is averred that the property was thereafter gifted to defendant by said Smt. Kamal Sharma @ Kamal Sareen during her left time through registered Gift Deed dated 21.09.2021. It is contended that she was having absolute right in the property as was purchased by her. It is contended that the case laws relied upon by the plaintiff are not helpful to him as the facts of the said cases are different to the facts of present case.

10. The Gift Deed executed by mother of the parties is registered, as such, a presumption arises for its valid execution. Reference may be made in this regard on case Prem Singh Vs Birbal, AIR 2006 SC 3608. The contention of the plaintiff is that the consideration amount to purchase the property by the mother was paid from the bank account in which the amount was got transferred by her from the account of Sh. Ramesh Chander Sareen after his death. The mother of the parties Smt. Kamal Sareen inherited the movable/immovable assets left by Sh. Ramesh Chander Sareen being his wife and thus became absolute owner of such assets. The law also does not debar the owner of a property to part with the same even after execution of Will in regard to the property. The facts of the cases relied upon by the plaintiff are different to the facts of the present case as in the present case, it was the mother of the parties who had purchased the property in her name after the death of husband whereas in the case Kiran Bhatti relied upon by the plaintiff, the property was purchased in the name of wife by the husband. In the facts and circumstances of the case, it appears to me that the plaintiff is

not having a prima facie case, at this stage, in his favour. It is settled law that no interim injunction can be granted to a party if a prima facie case is not existing in its favour even in the case, remaining two essentials i.e. balance of convenience and irreparable loss are in its favour.

11. Considering all these facts, the application of the plaintiff under Order 39 Rule 1 and 2 CPC is dismissed.

12. Put up on **22.11.2024** for completion of pleadings and settlement of issues.

(SUNIL CHAUDHARY)
DJ-04/North-West
RHC/Delhi 16.08.2024