

**IN THE COURT OF SH. RAHUL BHATIA
ADDITIONAL DISTRICT JUDGE-01
SOUTH-EAST DISTRICT, SAKET COURTS: NEW DELHI**

CS DJ 125-23
Angad Ahuja Vs. Vikas Ahuja & Ors

Angad Ahuja **.... Plaintiff**

Versus

Vikas Ahuja & Ors **.... Defendants**

ORDER
11.12.2024

1. Vide this order, I will decide the application under Order VII Rule 11 of CPC, filed by defendant nos. 1 and 2.
2. The present suit has been filed by the plaintiff for declaration that the Will dated 29.11.2001 executed by late Sh. Brahm Dutt Ahuja is null and void and has no legal effect.
3. The case of the plaintiff is that plaintiff is the grandson of late Sh. Brahm Dutt Ahuja and the defendant no.1 is his step brother. Defendant no.2 is the wife of defendant no.1. Defendant no.3 is the son of late Sh. Brahm Dutt Ahuja.
4. It is stated that Sh. Brahm Dutt Ahuja had two sons being Sh. Ramesh Kumar Ahuja and defendant no.3. Sh. Ramesh Kumar Ahuja had earlier married one Ms. Nilam in 1969 and defendant no.1 was born out of the said wedlock. Thereafter, they got divorced and Sh. Ramesh Kumar Ahuja married Smt. Neeta in 1982 the plaintiff was born to them. The grandmother of the

plaintiff and defendant no.1 passed away on 20.01.1997.

5. It is stated that the plaintiff and his parents had very cordial relations with his grandfather and they were taking care of him till his death. The defendant no.1 is living abroad since 1995-96 and defendant no.3 has been living in United Kingdom since the past 50 years. As the plaintiff and his family were residing with the deceased grandfather, they were the only people taking care of him.

6. It is stated that between 1999 and 2001, the defendants nos. 1 and 2 came back to India for a short period of time and thereafter shifted to Cyprus and ultimately in the year 2008 they got permanently settled in Canada. Whenever the defendants nos. 1 and 2 used to come to India, they would heap praises on quality of life abroad to the grandfather and lured him with ulterior motive in order to siphon of the property of the grandfather.

7. Late Sh. Brahm Dutt Ahuja passed away on 23.08.2022 at the age of 103 years. It is stated that at that point of time, defendant no.1 was abroad and defendant no.2 was at the suit property and restricted the plaintiff and his mother to enter the ground floor of the property or to establish any meaningful contact with Sh. Brahm Dutt Ahuja. Immediately, after his death, defendants nos. 1 and 2 got hold of all his belongings. Defendants nos. 1 and 2 had the keys of the almirah in which Sh. Brahm Dutt Ahuja had kept all his papers including a Will made by him in November 2010. They refused to handover the keys or other documents of Late Sh. Brahm Dutt Ahuja. It is further stated that

the defendant no.1 sent an email dated 10.09.2022 along with a copy of Will dated 19.11.2001 and the plaintiff for the first time came to know of the said Will. However, as per the information of the plaintiff, Late Sh. Brahm Dutt Ahuja had executed another Will in November 2010 which the defendants have deliberately conceal. It is further the case of the plaintiff that Will dated 19.11.2001 is not the last and final Will of the deceased and moreover the same was executed under the undue influence of defendant nos. 1 and 2.

8. Summons were issued to the defendants and defendants nos. 1 and 2 appeared and along with their written statement filed an application under Order VII Rule 11 of CPC with respect to the issue of the Court Fees. Therafter, the present application under Order VII Rule 11 of CPC, has been filed by the defendants nos. 1 and 2.

9. The defendants have stated that no cause of action has been shown in the present plaint and as such the present plaint deserves to be rejected. It is stated that there are two grounds sought by the plaintiff to challenge the Will dated 19.11.2001 one being undue influence and second being a later Will being executed by the deceased.

10. It is submitted by Ld. Counsel for defendants nos. 1 and 2 that the only allegations made by the plaintiff is regarding the undue influence on the testator in executing the said Will. It is submitted that the case of the plaintiff is that the defendant nos. 1 and 2 used to bring gifts for the deceased and used to lure him to

come and live abroad with them. It is submitted that the alleged actions are covered by illustration (viii) of Section 61 of the Indian Succession Act and as such the Will would not be rendered invalid merely because defendants nos. 1 and 2 gave gifts to the deceased. It is further submitted that the Will of the year 2010 is a mere afterthought as neither the Will has been placed on record nor any other averments regarding its existence have been made. It is further submitted that the present suit is barred under Section 34 of the Specific Relief Act, 1963 as no consequential relief of the declaration has been sought in the present petition. Defendants have relied upon the following judgments.

(I) *Ferro Alloys Corpn. Ltd. & Anr. v. UOI & Ors.* [(1999) 4 SCC 149]

(II) *Lonakutty v. Thomman & Anr.* [AIR 1976 SC 1645]

(III) *Suresh Madan & Ors. v. Manavendra Singh & Ors.* [2022 SCCOnLine MP 222]

(IV) *T. Arivandandam v. T.V. Satyapal* [(1977) 4 SCC 467]

(V) *Rajendra Bajoria and others v. Heman Kumar Jalan and Ors.* [(2021) SCC Online SC 764]

(VI) *Dahiben v. Arvinbhai Kalyanji Bhanusali* [(2020) 7 SCC 366]

11. *Per contra*, Ld. Counsel for the plaintiff has submitted that this is the second application under Order VII Rule 11 of CPC filed by the defendants and as such the same cannot be entertained by the Court. It is further submitted that the Will obtained by the defendants is covered under illustration (i) of Section 61 of Indian Succession Act and as such is invalid. It is further submitted that even if it is assumed that the said Will is genuine, the same has no

effect as the deceased made a subsequent Will in 2010 which the plaintiff would need to approve in order to establish his case as disputed questions of fact as to the existence of the second Will and the genuineness of the first Will have been raised, the same is the matter of trial and the plaint cannot be summarily rejected.

12. Heard. Perused.

13. On the meaningful reading of the plaint, it is revealed that the plaintiff has sought to rely upon two sets of cause of action one being the genuineness of the first Will and second being a subsequent Will being executed by the deceased. Even if the contentions of the defendants as to the first Will is believed, the Will can still be declared as invalid or having no legal effect if the subsequent Will is proved. Plaintiff has stated in his plaint that the deceased executed a Will in November 2010, and the same was kept in the almirah of the deceased which was taken in possession by defendant no.2 after the death of the testator.

14. If the plaintiff is able to prove that there was a validly executed Will of November 2010, subsequent to the Will dated 29.11.2001, the later Will will have to take precedence and the prior Will would have no legal effect. As such, to prove his case, the plaintiff has to either show that the Will dated 29.11.2001 was executed by undue influence or that there was a later Will. The plaintiff has claimed both of these facts in his plaint and as such has shown prima facie cause of action to continue with the present case. Although, the Will has not been placed on record, however, this is a question of sufficiency of evidence to prove his case.

Hon'ble Supreme Court of India has held in *Mayar (H.K.) Ltd., vs. Owners and Parties, Vessel M.V. Fortune Express* AIR 2006 1828 that even if in the opinion of Trial Court the plaintiff has very little chance of success, still the same would not be ground to reject the plaint. As long as there is some cause of action shown in the plaint which requires determination by the Court, the plaint cannot be rejected and the parties have to stand trial to prove their respective cases.

15. As far as the issue of this being the second the application under Order VII Rule 11 of CPC, since the previous application was based on the insufficiency of Court fees and the present application deals with issues which have not been decided in the previous application, the application cannot be rejected summarily on the ground of previous application.

16. Ld. Counsel for defendant nos. 1 and 2 has relied upon the judgments of Hon'ble Supreme Court in *Rajendra Bajoria (supra)* and *Dahiben (supra)*, however, these judgments lay down the general principles that to decide an application under Order VII Rule 11 of CPC, the whole plaint has to be looked at to ascertain whether any cause of action has been shown in the plaint or not. As the merits of the application has already been dealt with, after considering the plaint, the above judgment have been complied with.

17. As far as the objection that no consequential relief has been sought, suffice is to say that in the present case, the plaintiff has sought declaration that the Will propounded by the defendants nos.

1 and 2 to be having no legal effect. If the said Will is declared to have no legal effect, the plaintiff is not required to claim any further relief in this case and as such this objection of the defendants is also not sufficient to reject the plaint.

18. In view of the above discussion, this Court is of the opinion that no grounds mentioned in Order VII Rule 11 of CPC have been made out by the defendants and as such the present application is dismissed.

**Announced in the open
Court on 11.12.2023**

**(RAHUL BHATIA)
Additional District Judge 01(SE),
Saket Courts, New Delhi.**