

**IN THE COURT OF SH. RAMESH KUMAR-II
ADDITIONAL DISTRICT JUDGE-01: SHAHDARA
KARKARDOOMA COURTS
DELHI**

CS No. 264/2020

In the matter of:-

Ms. Anita Chawla

.....Plaintiff

Versus

Ms. Shalu Chawla & Ors.

.....Defendants

19.10.2023

ORDER

Vide this order I shall dispose of application under Order VII Rule 11 read with Order II Rule 2 & Section 151 CPC of the Code of Civil Procedure (for short "CPC") filed on behalf of defendant no.3.

The plaintiff has filed the suit for declaration and permanent injunction (as amended) against the defendants on the grounds that she is sole and absolute owner of the property bearing no.1/9263, Gali No.7, Near Canara Bank, Main Babarpur/Hanuman Road, West Rohtash Nagar, Shahdara, Delhi-32 with a prayer to pass following reliefs:

- i. A decree of declaration may be passed in favour of plaintiff and against the defendants whereby the gift deed dated 04.06.2018 in respect of 50% share of suit property bearing no.1/9263, Gali No.7, Near Canara Bank, Main Babarpur/Hanuman Road, West Rohtash Nagar, Shahdara, Delhi-32 in favour of defendant no.1 is to be declare null and void;
- ii. A decree of declaration may be passed in favour of plaintiff and against the defendants whereby the rent agreement dated 01.03.2018 in respect of suit property bearing no. 1/9263, Gali No.7, Near Canara Bank, Main Babarpur/Hanuman Road, West Rohtash Nagar, Shahdara, Delhi-32 executed between Vishal Chawla, and defendant no.3 is to be declared as null and void;
- iii. A decree of permanent injunction may be passed against the defendant no.1 and 2 not to transfer, alienate and create third party interest in respect of alleged 50% share in the suit property i.e. 1/9263, Gali No.7, Near Canara Bank, Main Babarpur/Hanuman Road, West Rohtash Nagar, Shahdara, Delhi-32 till the disposal of the suit on the basis of gift deed dated 04.06.2018 in favour of the plaintiff and against the defendant no.1 and 2;
- iv. A decree of permanent injunction may be passed against the defendant no.3 not to transfer the shop under his tenancy to defendant no.1 and 2, Vishal Chawla and any other third person till the disposal of the present suit in respect of the shop in property no. 1/9263, Gali No.7, Near Canara Bank, Main Babarpur/Hanuman Road, West Rohtash Nagar, Shahdara, Delhi-32.

- v. Cost of the proceedings may also be allowed to the plaintiff;
- vi. Any other order which this court may deem fit and proper may also be passed.

The defendant no.3 has filed his written statement thereby taking preliminary objections inter alia that the suit of the plaintiff is not maintainable under Order 7 Rule 11 CPC and under Section 41 of Specific Relief Act for want of cause of action against the defendant no.3; that the present suit is an abuse of process of law as the plaintiff has filed two separate suits against the defendant no.3 seeking similar reliefs emerging from the same cause of action; that there is no relationship of landlord and tenant between the parties and hence, no privity of contract and the plaint is liable to be rejected on this sole ground against the answering defendant; that the suit is time barred and the plaintiff has no locus standi to file the present suit; that defendant no.3 was never a tenant of the plaintiff and has never attorned her as landlady and has never paid rent to her since inception of tenancy.

Alongwith written statement the defendant has also filed an application under Order VII Rule 11 read with Order II Rule 2 CPC stating therein that the suit of the plaintiff is not maintainable under Order 7 Rule 11, under Order 2 Rule 2 CPC and under Section 41 of Specific Relief Act for want of cause of action against the defendant no.3; that the present suit is an abuse of process of law as the plaintiff has filed two separate suits against the defendant no.3 seeking similar reliefs emerging from the same cause of action; that there is no relationship of landlord and tenant between the parties and hence, no privity of contract

and the plaint is liable to be rejected on this sole ground against the answering defendant; that the suit is time barred and the plaintiff has no locus standi to file the present suit; that defendant no.3 was never a tenant of the plaintiff and has never attorned her as landlady and has never paid rent to her since inception of tenancy. It is further stated that the defendant has been a tenant under the land-lordship of Sh. Vishal Chawla vide registered rent agreement dated 01.03.2018 for a period of four years and since then he has been paying rent to Sh. Vishal Chawla till date and moreover, it is admitted fact by the Plaintiff that the Defendant paying rent to Sh. Vishal Chawla and not to her. It is further stated that the suit of plaintiff is ill motivated and has been filed to just harass and blackmail the defendant and admittedly in this respect a suit to permanent injunction is pending adjudication before the court of Sh. Sachin Gupta, Ld.CJ, Shahdara, KKD, Delhi titled as "Bharat Suneja Vs. Dharmender Chawla & Anr." in case bearing No.384/2020 wherein the application of the defendant herein, under Order 39 Rule 1 & 2 CPC has been allowed by that court. It is further stated that that the suit is liable to be dismissed for want of proper court fee and valuation and the suit is liable to be dismissed as the case titled as Shalu Chawla Vs. Dharmender Chawla & Anr." is already pending adjudication in the Court of Ms. Aditi Garg, ASCJ, Shahdara, KKD, Delhi in case bearing CS No.1511/2019 in which also application under Order 39 Rule 1 & 2 CPC was allowed in favour of plaintiff therein. It is further stated that the alleged gift deeds dated 05.09.2019 are afterthought and have no value in the eyes of law during existence of earlier Gift Deed dated 04.06.2018 executed by Sh. Vishal Chawla in favour of his wife

Smt. Shalu Chawla. It is further stated that Sh. Pishori Lal, father of Sh. Vishal Chawla (landlord of defendant herein) and Sh. Dharmender Chawla, had executed a Registered WILL dated 23.04.2002 by which the suit property measuring 100 sq. yards in total was bequeathed in law of his above named two sons in equal share of 50 sq. yards each. Accordingly, after the death of Sh. Pishori Lal Chawla, the above WILL was acted upon and acknowledged by the family and as a result the suit property i.e. shop in question falls in favour of Sh. Vishal Chawla, who is landlord of the defendant herein and as result the registered rent agreement dated 01.03.2018 was executed between the two for a period of four years and since then the defendant has been paying rent to Sh. Vishal Chawla. It is further stated that as per the information received from the Defendant's landlord i.e. Sh. Vishal Chawla, the two alleged WILLS dated 31.01.2006 and 29.09.2008 are with respect to same portion of 50 sq. yards i.e. for a shop at Ground Floor (Commercial) and for Upper Floors (Residence) and the Sh. Dharmender Chawla executed Gift Deed accordingly in favour of the Plaintiff herein only with respect to 50 sq. yards portion which belongs to Dharmender Chawla and not with respect to the other half portion of property measuring 50 sq. yards which belongs to wife of Plaintiff's landlord, namely, Smt. Shalu Chawla vide Gift Deed dated 04.06.2018. It is further stated that if the intention of Late Sh. Pishori Lal was to bequeath 100 sq. yards in favour of Sh. Dharmender Chawla then he could execute a single WILL with respect to whole property. It is further stated that the suit of the plaintiff is not maintainable and is an abuse of process of law and same may kindly be dismissed with cost.

The plaintiff has filed reply to the present application denying all the assertions made therein and has prayed for dismissal of the said application on the ground that the present application is not maintainable in the eyes law as the same has been filed only to delay the proceedings and the court after hearing preliminary submission has issued the summons to the defendant and it is very suppressing that instead of contesting the said suit on merits the defendant filed the present application which deserves dismissal on the face of it. It is further stated that for deciding an application under order 7 rule 11 CPC the contents of plaint and documents referred to alongwith plaint are to be seen and except these nothing can be seen for deciding an application under order 7 rule 11 CPC, hence the present application be dismissed with cost.

Thereafter, this matter was fixed for arguments on the application under Order VII Rule 11 CPC.

Arguments were heard on this application on behalf of both the parties.

During the course of arguments, it was argued on behalf of defendant no.3 that the suit of the plaintiff is not maintainable under Order 7 Rule 11, under Order 2 Rule 2 CPC and under Section 41 of Specific Relief Act for want of cause of action against the defendant no.3; that the present suit is an abuse of process of law as the plaintiff has filed two separate suits against the defendant no.3 seeking similar reliefs emerging from the same cause of action; that there is no relationship of landlord and tenant between the parties and hence, no privity of contract and the plaint is liable to be rejected on this sole ground against the answering defendant; that the suit is time barred and the plaintiff

has no locus standi to file the present suit; that defendant no.3 was never a tenant of the plaintiff and has never attorned her as landlady and has never paid rent to her since inception of tenancy. It is further stated that the defendant has been a tenant under the land-lordship of Sh. Vishal Chawla vide registered rent agreement dated 01.03.2018 for a period of four years and since then he has been paying rent to Sh. Vishal Chawla till date and moreover, it is admitted fact by the Plaintiff that the Defendant paying rent to Sh. Vishal Chawla and not to her. Ld. Counsel for defendant further submitted that the suit of plaintiff is ill motivated and has been filed to just harass and blackmail the defendant and admittedly in this respect suit for Permanent Injunction is pending adjudication before the Court of Sh. Sachin Gupta, Ld.CJ, Shahdara, KKD, Delhi titled as "Bharat Suneja Vs. Dharmender Chawla & Anr." in case bearing C.S. No.384/2020 wherein the application of the defendant herein under Order 39 Rule 1 & 2 has been allowed by the said court and therefore, the the suit is liable to be dismissed as the matter titled as "Shalu Chawla Vs. Dharmender Chawla & Anr." is already pending adjudication in the Court of Ms. Aditi Garg, Ld. ASCJ, Shahdara, KKD, Delhi in case bearing C.S. No.1511/2019 in which also application under Order 39 Rule 1 & 2 CPC was allowed in favour of plaintiff therein. Ld. Counsel for defendant further submitted that the alleged Gift Deeds dated 05.09.2019 are afterthought and have no value in the eyes of law during existence of earlier Gift Deed dated 04.06.2018 executed by Sh. Vishal Chawla in favour of his wife Smt. Shalu Chawla and it is pertinent to mention here that Sh. Pishori Lal, father of Sh. Vishal Chawla (landlord of defendant herein) and Sh. Dharmender

Chawla, had executed a registered Will dated 23.04.2002 by which the suit property measuring 100 sq. yards in total was bequeathed in favour of his above named two sons in equal share of 50 sq. yards each and accordingly, after the death of Sh. Pishori Lal Chawla in 2016, the abovesaid Will was acted upon and acknowledged by the family and as a result of which the suit property i.e. shop in question falls in favour of Sh. Vishal Chawla, who is the landlord of the defendant herein. On the abovesaid grounds, Id. Counsel for defendant has requested to reject the suit of the plaintiff under Order 7 Rule 11 CPC.

Per contra, Id. Counsel for plaintiff has vehemently opposed the present application, arguing that the plaintiff is the sole and absolute owner of the suit property i.e. property bearing no.1/1963, Ground floor, West Rohtash Nagar, Shahdara, Delhi of 100 sq. yds. by virtue of two separate Gift Deeds dated 05.09.2019 executed by Sh. Dharmender Chawla in her favour. Id. Counsel for plaintiff further submitted that the present application under Order VII Rule 11 CPC is not maintainable as the contents of the application does not disclose any reason, whereby the suit of the plaintiff be rejected under order VII Rule 11 CPC and all the contents of the application clearly stated that the present suit cannot be rejected without making any trial. Id. Counsel for plaintiff further submitted that the application filed by the defendant does not cover any clauses or provisions of Order VII Sub Clause (a) to (f) from corner and also not fulfill the requirements of the clauses stated in the Under Order VII CPC. Id. Counsel for plaintiff further submitted that the defendant has filed the application just to delay the proceedings and by virtue of this application the suit of the plaintiff got

delayed approx. 1.5 to 2 years which causes monetary loss to the Plaintiff as the plaintiff is not able to get the possession of the tenanted premises from the defendant. Ld. Counsel for plaintiff further submitted that it is settled principal of law that for deciding an application under order VII Rule 11 CPC only the contents of the plaint and documents may be seen and nothing else can be referred for deciding an application under Order VII Rule 11 CPC. Ld. Counsel for plaintiff further submitted that the application is not maintainable in law as the same has been filed only to delay the proceedings. Ld. Counsel for plaintiff further submitted that the plaintiff has filed the present suit on the cause of action as mentioned in the suit and the Court after hearing preliminary submissions has issued the summons to the defendant and it is very suppressing that instead of contesting the said suit on merits the defendant filed the present application which deserves dismissal on the face of it. On the abovesaid grounds, ld. Counsel for plaintiff has requested to dismiss the application of the defendant with costs.

Both the parties have also filed written arguments in support of their respective stands.

Before proceeding further, it would be appropriate to refer to Order VII rule 11 of the CPC which reads as under:-

“11. Rejection of Plaint – The plaint shall be rejected in the following cases:-

- a) **Where it does not disclose a cause of action;**
- b) **where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**

- c) **where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Courts, fails to do so;**
- d) **where the suit appears from the statement in the plaint to be barred by any law;**

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I have considered the submissions made on behalf of the parties and perused the record.

The perusal of the plaint shows that the plaintiff has filed the present suit for declaration and permanent injunction. The plaintiff in her plaint has specifically averred that she is sole and absolute owner of the suit property by virtue of gift deeds dated 05.09.2019. It is settled principle of law that the averments made in the plaint are the germane and at the time of the disposal of the application under Order VII Rule 11 CPC, the cause of action has to be culled out on a conjoint reading of all the paragraphs of the plaint. It is also settled law that while considering an application under Order VII Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendant in its written statement would be irrelevant. Further, the defendant no.3 has taken all these objections in his written statement and issues to that effect can be framed in respect thereof and then only the court would be in a position to conclusively determine the real controversy between the parties on the basis of evidence led by the parties. Therefore, this court is of the opinion that it would not be just, fair and proper to decide the rights of parties without considering the evidence which the parties may adduce during the course of trial. The requirements of Order VII rule 11 CPC for rejection of plaint is not made out. Application Order VII rule

11 CPC is meritless and deserves dismissal outrightly. Therefore, keeping in view all these facts and circumstances, the present application of defendant no.3 under Order VII Rule 11 read with Section 151 CPC is hereby dismissed forthwith.

Application stands disposed of accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 19.10.2023).

(RAMESH KUMAR-II)
ADDL. DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI