

**IN THE COURT OF MS. PURVA SAREEN,
DISTRICT JUDGE-01, SOUTH DISTRICT,
SAKET COURTS, NEW DELHI.**

CS No. 688/2023

Surender Kumar Malik

...Plaintiff.

Versus

Ravinder Kumar Malik and Ors.

...Defendants.

03.06.2024

Present : Sh. Rajiv Gurung, counsel for plaintiff.

Sh. Yogesh Gupta and Sh. Sumit Kumar, counsel for
defendant no.6.

Sh. Anil Sharma and Sh. Arpit Sharma, counsel for
defendant no.2.

Sh. Karambir Singh, counsel for defendant no.3.

ORDER

1. Vide this order, I shall dispose off the application under Order 7 Rule 11 CPC filed by the defendant no.6 seeking rejection of the plaint.
2. Plaintiff has filed the present suit for declaration, possession, mesne profit and permanent and mandatory injunction against the defendants. As per the facts, plaintiff and defendant no.1 are real brothers and sons of late Sh. Bhagwan Malik. Defendant no.2 is the wife of defendant no.1 and defendants nos.3 and 4 are the sisters of the

plaintiff and defendant no.1, residing in their matrimonial houses. The father of the plaintiff and the defendants received the suit property as his share alongwith other properties after the demise of his father. During his lifetime, he executed a Will whereby he bequeathed the property A (suit property) to plaintiff and defendant no.1 and his two sons. Defendant no.1 was not happy with the decision and insisted that his father should also execute a GPA in his favour authorizing defendant no.1 to take care of property A and also to collect rent from the said property as he was the elder son and plaintiff was too young. Sh. Bhagwan Malik succumbed to the pressure, however, he executed a GPA in favour of both his sons but defendant no.1 also got incorporated a clause in the said GPA authorising himself and plaintiff to sell property A and to receive the sale consideration in their own name. Neither plaintiff nor his father knew about the said clause.

3. After few month defendant no.1 suggested that they should get the property developed so that it can fetch more rent and for that purpose got a document in the name of defendant no.5 purported to be sale deed dated 14.06.2010. Defendant no.5 was a good family friend who undertook to get the development work of the property done. The said sale deed was also got registered and it was decided that after the development, the property shall be divided

between plaintiff and defendant no.1 in equal share. It was submitted that there was never an intention to sell the suit property and hence, it was only a paper transaction and no consideration was ever paid by defendant no.5. The plaintiff even checked with the banks and annexed the account details of the plaintiff, defendant no.1 and defendant no.5 to prove this fact. It is submitted that as the sale deed was without any consideration, hence, same was void *ab initio*. The property was never handed over to defendant no.5, in fact, the property was rented out by plaintiff's father and plaintiff's mother namely Phoolwati, who was collecting rent from the said property on behalf of the family. Plaintiff continued requesting defendant no.1 to start the development work but no steps were taken by defendant no.1 or defendant no.5 and on 03.11.2012 defendant no.1 gave an handwritten undertaking to plaintiff assuring that they would together develop the property and divide the property in equal share and that he would not betray the plaintiff.

4. Meanwhile on 04.10.2017, a suit was filed by the mother of plaintiff and defendant no.1 under the The Domestic Violence Act seeking the rent of the suit property for her maintenance and day to day expenses for herself and her husband. Immediately, thereafter, defendant nos.1 and 2 secretly on 08.11.2017 created a document in the

form of a gift deed wherein suit property A was gifted by defendant no.5 in favour of defendant no.2, wife of defendant no.1. This was done to usurp the right of plaintiff and other co-parceners by illegal means. A written statement was filed by the plaintiff and defendant no.1 and 2 in the DV Act complaint where there was no mention of the gift deed. The rent was always being collected by Phoolwati, mother of plaintiff and defendant no.1. In 2019, defendant no.1 and 2 raised a claim over the said property which was objected to by the father of the plaintiff and other family members. On 27.09.2019, plaintiff received summons in a suit filed by defendant no.2 for injunction and recovery of rent in respect of the suit property on account of the gift deed dated 08.11.2017 made by defendant no.5 in her favour. By virtue of the said gift deed, she claimed to be owner of property A. That was the first time when the plaintiff came to know about the alleged gift deed and objected to the fraudulent and illegal acts of defendants no.1 and 2. He confronted defendant no.1 who somehow convinced the plaintiff that in order to avoid any complication he had taken the said step and would eventually divide the property between both of them.

5. Thereafter, defendants no.1 and 2 started pressurizing the tenants to give the rent to them instead of the mother of

plaintiff and defendant no.1. The father of the plaintiff and defendant no.1 asked his wife to execute written lease agreements with the tenants and asked them to deposit the rent directly into the bank account of the mother of plaintiff and defendant no.1. Subsequently, defendant no.2 filed another civil suit against one of the tenants for recovery of possession and rent stating that she was the owner of the property by virtue of gift deed dated 10.11.2017. It is stated that gift deed which was a sham document as it was executed by a person who himself had no right and title in the property. In the said suit the tenant denied the ownership of defendant no.2. Meanwhile, on 10.03.2020 father of the plaintiff and defendant no.1 passed away and defendant no.1 and 2 continued to pressurize their mother to handover the possession of the property and continued threatening the tenants to pay the rent to defendant no.2.

6. In July, 2022, defendants nos.1 and 2 behind the back of the plaintiff entered into an agreement with Phoolwati wherein they agreed to pay Rs.60,000/- monthly to her in lieu of the rent upon the condition that she would stop collecting rent from tenants and would not object to defendant no.1 and 2 dealing with the property. Immediately after entering the said agreement, defendant no.2 in collusion with defendants nos.1 and 6 transferred

the property in favour of defendant no.6 Sh. Harish Malik in exchange of another property (property B) vide an exchange deed dated 01.08.2022. The exchange deed was also got registered in the sub-Registrar Office. Thereafter, defendants nos.1 and 2 started interfering with nother co-parcenory property (property C) where in the family members including plaintiff, defendant no.1 and their mother had been residing. Defendants nos.1 and 2 started demolishing a portion of the ground floor of the said property illegally, unauthorizedly and without consent and knowledge of plaintiff and other co-parcenors and plaintiff was constrained to file a civil suit against defendants nos.1, 2 and other family members for declaration and permanent injunction wherein status quo was granted. Meanwhile, plaintiff came to know about the exchange deed and he realised that a fraud had been played upon him. Construction activities were started by defendants nos.2 and 6 at property A and B respectively. He even sent a notice for stopping construction activity. Meanwhile, a settlement was arrived at in the Domestic Violence Act case. On 16.10.2023, mother of plaintiff and defendant no.1 Phoolwati passed away.

7. It is submitted that the purported gift deed made in favour of defendant no.2 was a sham as defendant no.5 had no right, title or interest. The sale deed dated 14.06.2010

was also void. The exchange deed was also inoperative and illegal as it was executed to usurp the legitimate rights of the plaintiff. Hence, the present suit was filed by the plaintiff.

8. Defendants were summoned and defendant no.6 came up with an application under Order VII Rule 11 CPC stating therein that the suit was barred under article 58 of Limitation Act as the limitation provided for seeking declaration was three years. The plaintiff had relied upon the registered gift deed dated 08.11.2017 and the suit was filed on 29.11.2023 after a gap of 6 years. Even if the plaintiff came to know about the alleged gift deed on 27.09.2019 on receipt of summons then too the suit is barred by limitation. Hence, the suit merits dismissal.
9. Reply was filed by the plaintiff to the application under Order VII Rule 11 CPC wherein wherein he referred to the judgment passed by the Hon'ble Supreme Court in suo motu writ petition no.3 of 2020 whereby due to the pandemic, the period from 15.03.2020 to 28.02.2022 was excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. It was also directed that the balance period of limitation remaining shall become available from 01.03.2022.

10. Arguments heard and record perused.
11. It is a settled position in law that at the stage of application under Order VII Rule 11 of the CPC, the plaint and the plaint alone is looked into.
12. In case titled as **Saleem Bhai & Ors. Vs. State of Maharashtra Ors.**, (2003) 1 SCC 557, in which, while considering Order VII Rule 11 of the Code, it was held as under :

“9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding any application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court” It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments / pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At this stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V.Fortune Express and Others(2006) 3 SCC 100.

13. Therefore the court shall look into the plaint only while deciding the application under Order VII Rule 11 of the CPC.

14. As per the plaint the date of knowledge of the gift deed was 27.09.2019 and prior to 15.03.2020 when the limitation was stayed by the orders of the Hon'ble Supreme Court, the total period that got exhausted was 5 months and 17 days. The plaintiff was left with more than 2 years and 6 months after excluding the period of 5 and 17 days. As the suit was filed on 08.11.2023, the same was filed within 1 year and 8 months against the balance period of two years and six months. Hence, the present suit is within limitation. Therefore, the application under Order 7 Rule 11 CPC stating that the suit be rejected as the same is barred by limitation is without merits and hence, the application is dismissed and disposed of accordingly. No order as to cost.

15. Matter be listed for arguments on application under Order 39 Rule 1 and 2 CPC on 04.09.2024.

**Announced in the open court
On 03.06.2024.**

**(Purva Sareen),
DJ-01, South District,
Saket Court/New Delhi.**