

24.01.2026

Present: Sh. Sandeep Garausa and Sh. Shoaib Ahmad Khan,  
Ld. Counsels for plaintiff.  
Sh. Arsh Dhanotia, Ld. Counsel for defendant no.1.  
Defendant no. 2 in person.

1. Applications under Order VII Rule 11 CPC and under Order VI Rule 17 CPC are pending for disposal.

2. Submissions heard. Record perused.

3. Briefly stated, the present suit for declaration, mandatory injunction, and permanent injunction has been filed by the plaintiff (husband) against the defendants, wherein Defendant No. 1 is the wife of the plaintiff, and Defendant No. 2 is the real brother of the plaintiff. The plaintiff seeks the following reliefs:

*a) A decree of declaration in favour of the plaintiff and against the defendants declaring that the Gift Deed No. 2305 dated 22.03.2019, registered in Additional Book No. I, Volume 9.933 at Pages 117 to 122, in favour of Defendant No. 1 for the suit property bearing No. A-144, Second Floor, Sector 8, Dwarka, New Delhi, is null and void.*

*b) A decree of declaration that the plaintiff is the owner and in possession of the suit property.*

*c) A decree of permanent injunction in favour of the plaintiff and against the defendants, restraining the defendants, their agents, men, and servants from dispossessing the plaintiff and from creating any third-party interest in the suit property bearing House No. A-144, Second Floor, Sector 8, Dwarka, New Delhi,*

*more particularly delineated and described in the site plan marked by red colour as ABCD.*

*d) Any other order or decree which this Hon'ble Court deems fit and proper in favour of the plaintiff and against the defendants in the facts and circumstances of the case.*

4. It is contended that in the year 2003, the late Sh. Raj Bansi Shah (father of the plaintiff and Defendant No. 2) purchased the suit property in the name of Defendant No. 2, wherein the entire consideration was paid by the father only. It is further contended that both parents of the plaintiff and Defendant No. 2 passed away i.e. the father on 27.10.2004 and the mother on 01.07.2019 leaving behind three sons as Class-I legal heirs. Thereafter, a family settlement was entered into between the parties for the division of all properties left by their parents. It is further contended that, in terms of the settlement, Defendant No. 2 was to execute a gift deed in favour of the plaintiff. However, since the relationship between the plaintiff and Defendant No. 1 was cordial at the time, and to save on stamp duty, the documents were executed in favour of Defendant No. 1 by Defendant No. 2.

5. It is further contended that thereafter, the relationship between the plaintiff and Defendant No. 1 turned sour due to various reasons, and Defendant No. 1 filed various complaints against the plaintiff. It is also contended that Defendant No. 2 never intended to execute the gift deed in favour of Defendant No. 1 and strongly supports the present suit. Hence, the gift deed may be declared null and void. Lastly, it is submitted that the

plaintiff has been in possession of the suit property since the beginning.

6. In the application under Order VI Rule 17 CPC, it is submitted that due to some technical defect, the plaintiff seeks amendment in the valuation of the plaint as well as in the prayer clause, as follows:

<b>Pre-Amendment</b>	<b>Post-Amendment</b>
<p>22. That the suit is valued at Rs.200/- for the purposes of jurisdiction and fixed court fee of Rs.13/- is being paid for the reliefs claimed. The valuation of the suit for declaration is fixed at Rs.200/- and court fee of Rs.200/- is affixed along with suit and suit for permanent, mandatory injunction is valued at Rs.130/- and court fee of Rs.13/- is affixed with the plaint.</p>	<p>22. That the suit for the purposes of court fee and jurisdiction of this Hon'ble Court is fixed at Rs.7,50,000/- (Seventy Five Lac) for cancellation of Gift Deed and for purposes of declaration at Rs.200/- and for the purposes of injunction at Rs.130/- upon which requisite ad valorem court fee of Rs.75,544/- and Rs.213/- totaling Rs.75,757/- is being affixed.</p>
<p>PRAYER "a) Pass a decree of declaration favouring plaintiff and against defendants that the Gift deed No. 2305 dated 22.3.2019 registered in Addl. Book No.I Vol 9.933 at Pages 117 to 122 favouring defendant No.1 for suit property bearing No. A-144 Second Floor Sector 8, Dwarka New</p>	<p>PRAYER "a. Pass a decree favouring plaintiff and against defendants cancelling the Gift Deed No.2305 dated 22.03.2019 registered in Add. Book No.I vol 9.933 at pages 117 to 122 of Suit property bearing House no.A-144, 2nd Floor Sector 8, Dwarka, New Delhi 110077, registered in the office of sub Registrar IX,</p>

Pre-Amendment	Post-Amendment
<p>Delhi to be null and void.</p> <p>b) pass a decree of declaration that the plaintiff is the owner and in possession in suit property.</p> <p>c) to pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants their agents men, servants not to disposes the plaintiff and not to create any third party interest in the suit property bearing number House No. A-144 Second Floor Sector 8 Dwarka New Delhi more particularly delineated and described in site plan marked by words ABCD.</p> <p>d) to pass any other order/decree which this Hon'ble Court deems fit and proper in favour of the plaintiff and against the defendants in the facts and circumstances' of the case."</p>	<p>New Delhi.</p> <p>b. Pass a decree of declaration favouring plaintiff and against defendants that the Gift deed No. 2305 dated 22.3.2019 registered in Addl. Book No.I Vol 9.933 at Pages 117 to 122 favouring defendant No.1 for suit property bearing No. A-144 Second Floor Sector 8, Dwarka New Delhi to be null and void.</p> <p>c. pass a decree of declaration that the plaintiff is the owner and in possession in suit property.</p> <p>d. to pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants their agents men, servants not to disposes the plaintiff and not to create any third party interest in the suit property bearing number House No. A 144 Second Floor Sector 8 Dwarka New Delhi more particularly delineated and described in site plan marked by words ABCD.</p> <p>e. to pass any other order/decree which this Hon'ble Court deems fit and proper in favour of the plaintiff and against the defendants in the facts and circumstances' of the case."</p>

7. By way of the application under Order VII Rule 11 CPC, Defendant No. 1 seeks rejection of the plaint mainly on three grounds. *Firstly*, the jurisdiction of the civil court is barred under Section 8 of the Family Courts Act, 1984. *Secondly*, there is no cause of action as it was an unconditional gift deed. *Thirdly*, the present suit is barred by limitation, as the gift deed was executed in the year 2019, while the present suit is filed in the year 2025. Ld. Counsel for Defendant No. 1 further relied upon the judgment passed by the Hon'ble High Court of Delhi in *Avneet Kaur vs. Sadhu Singh & Anr. in CM (M) 69/2020* and the judgment passed by the Hon'ble Supreme Court of India in *R. K. Roja vs. U. S. Rayudu & Anr. (Civil Appeal No. 5540 of 2016)*.

8. Submissions heard. Record perused.

### **APPLICATION UNDER ORDER VII RULE 11 CPC**

#### **A. Lack of cause of action**

9. It is settled law that, while scrutinizing the averments of the plaint, it is the duty of the trial court to ascertain the material for cause of action, i.e., a bundle of facts which, taken with the law applicable thereto, gives the plaintiff the right to relief against the defendant. Even *in Dahiben vs. Arvindhbai Kalyanji Bhanusali (2020) 7 SCC 366*, the Hon'ble Supreme Court held that whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said

purpose, the averments made in the plaint in their entirety must be held to be correct.

10. The cause of action, as elaborately pleaded in paragraph 20 of the plaint, is reproduced herein below:

*"20. That the cause of action to file the present suit in favour of the plaintiff arose first time in September 2024 when the defendant No.1 filed case MC No. 877 of 2024 under Domestic Violence Act against plaintiff before M.M. (Mahila Court) Dwarka and became dishonest, illegally and fraudulently claimed to be the owner of suit property by virtue of alleged Gift deed No. 2305 dated 22.3.2019 registered in the office of Sub-Registrar IX New Delhi further cause of action arose where defendant No.1 threats illegally to sell the suit property. The defendant no.2 is siding and supporting for the illegal acts/Intentions of the defendant No.1. The aforesaid threats by the defendant no.1 and 2 to the possession ownership/ title of the plaintiff in suit property is still existing and subsisting."*

11. Thus, the plaint details the family settlement, the execution of the gift deed with the alleged intent to benefit the plaintiff, the subsequent deterioration in relations, and the cause accruing in September 2024 when Defendant No. 1 asserted ownership and threatened to sell the property under the Domestic Violence proceedings. Defendant No. 2's support and the plaintiff's continuous possession are also pleaded. These averments, if true, disclose a cause of action for challenging the gift deed as sham or without intent to transfer absolute title. The contention that it was an unconditional gift overlooks the plaint's

allegations of underlying family arrangement, which cannot be tested at this threshold stage. Thus, this ground fails.

## **B. Bar under Section 8 of the Family Courts Act, 1984**

12. As regards jurisdiction, Section 7 (1) Explanation (c) of the Family Courts Act, 1984<sup>1</sup> confers exclusive jurisdiction on Family Courts for suits or proceedings between parties to a marriage with respect to the property of the parties or of either of them, where the cause of action arises out of the matrimonial relationship. Section 8 of the Family Courts Act, 1984<sup>2</sup> bars civil courts from entertaining such suits. In the relied-upon judgment of *Avneet Kaur vs. Sadhu Singh & Anr. (CM (M) 69/2020, decided on 01.06.2022)*, the Hon'ble Delhi High Court held that disputes pertaining to property rights arising from matrimonial discord fall within the ambit of Family Courts if intertwined with marital issues, emphasizing a liberal interpretation to promote speedy resolution and conciliation.

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### **1 7. Jurisdiction**

(1) Subject to the other provisions of this Act, a Family Court shall-

- (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and
- (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation: The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely,-

- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

### **2 8. Exclusion of jurisdiction and pending proceedings**

Where a Family Court has been established for any area,-

- (a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section;
- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
- (c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—
  - (i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and
  - (ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.

13. However, the Hon'ble Delhi High Court in its recent Division Bench judgment in *Geeta Anand vs. Tanya Arjun & Anr. (CS(OS) 601/2022*<sup>3</sup> has clarified that the mere existence of a marital relationship between the litigating parties does not automatically oust the jurisdiction of civil courts or mandate exclusive Family Court jurisdiction. The key determinant is the nature and origin of the cause of action as pleaded in the plaint. If the dispute is independent of the marital relationship such as a pure proprietary or inheritance claim not founded upon the matrimonial bond—the civil court retains jurisdiction. In *Geeta Anand (supra)* it was held that:

*“44. Accordingly, the present reference is answered as under:*

*(a) Whether a suit for possession/injunction filed by the inlaws of the defendant or either of them, claiming themselves or either of them to be the exclusive owner of the property of which the possession is sought or with respect to which injunction is prayed for from or against the defendant/daughter-in-law, is to be tried exclusively by the Family Court established under the Act, and the jurisdiction of the Civil Court is barred?*

*Answer to Question (a): Each of the categories under Section 7(1)(a) of the Act are undoubtedly civil in nature. Since the principal question therein relates to a civil right, there is no gainsaying that when claim is made about ownership rights and relief is sought in the nature of possession or injunction and/or damages, such legal rights are to be considered de hors the matrimonial relationship. The proprietorship rights or ownership rights to immovable property are not integral to maintaining the matrimonial relationship. Such rights may be claimed as against a third person or anyone in the family or for that matter somebody connected through matrimonial relationship. Indeed, when it comes to a dispute as between mother-in-law and/or father-in-law on the one side and their es-*

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<sup>3</sup> 2024/DHC/2637-DB and 309 (2024) DLT 333

tranged daughter-in-law on the other side, the claim of proprietorship or ownership of a property and thereby seeking relief in the nature of possession and/or injunction by its very nature incidentally indicates a matrimonial relationship, but such relationship is not a foundational fact so as to lay a claim. Such relationship is not at the core of the dispute but exists independently in civil law, and thus, the Family Courts do not exercise exclusive jurisdiction over such disputes and as an inevitable corollary the jurisdiction of Civil Courts is not barred.

*(b) Whether the impleadment or non-impleadment of the husband or the defendant/son of the plaintiff has an effect on the maintainability of such a suit before a Civil Court?*

*Answer to Question (b): In light of our answer to Question (a), the answer to this question would necessarily have to be in the negative. The mere impleadment or non-impleadment of the husband or the defendant/son of the plaintiff would not be determinative of the question relating to the jurisdiction of the Family Court. The joinder or non-joinder of parties would have to be considered in light of the plethora of case law which already exists on that issue. Ultimately and irrespective of whether a husband is joined or not, the jurisdiction of the Family Court would have to be ascertained based on the cause of action and whether that is founded on the marital relationship or has a mere casual or incidental connection to the cause.*

45. We find ourselves unable to either subscribe or concur with the view expressed in Avneet Kaur for if the view as expressed in Avneet Kaur were to be accepted, it would clearly amount to an incorrect interpretation and understanding of the subject provision and the expression „circumstances arising out of marital relationship“. The said decision, in our considered opinion, lays out the contours of that expression too broadly and fails to accord due consideration to the facet of “cause of action”, which is of seminal importance. Thus, the said judgment stands overruled. We find ourselves in agreement with the views expressed in Manita Khurana and Meena Kapoor.”

**(emphasis is mine)**

14. Applying the above principles, perusing the plaint, the present suit primarily revolves around a family settlement among the legal heirs (three sons) of the deceased parents, involving the plaintiff and Defendant No. 2 (brother). The suit property originated from the father's purchase in 2003 in Defendant No. 2's name, with the gift deed of 2019 allegedly executed as a conduit under the family settlement to benefit the plaintiff, merely to save stamp duty during cordial spousal relations. Defendant No. 2 supports the plaintiff's claim, denying absolute intent to benefit Defendant No. 1. The involvement of Defendant No. 2 as a key party (donor) and the property's paternal origin distinguish this from pure matrimonial disputes. At this threshold stage, confining to the plaint's averments, the cause of action is independent of the marital relationship and does not *prima facie* fall exclusively under Section 7 Explanation (c). The mere presence of the wife as a defendant does not attract the bar under Section 8. Hence, the ground of jurisdictional bar is not made out.

### **C. Barred by Limitaion**

15. Regarding limitation, under Order VII Rule 11(d), the plaint can be rejected if it appears from the statement in the plaint to be barred by any law, including limitation. Article 58 of the Limitation Act, 1963 prescribes a three-year period for suits for declaration, commencing when the right to sue first accrues. Article 59 applies to cancellation of instruments, also three years from the date of knowledge of the facts requiring cancellation. The gift deed was executed in 2019, but the plaint avers that the

cause of action arose in September 2024 upon Defendant No. 1's fraudulent claim and threats. The plaintiff pleads that the execution was consensual under the family settlement and the discord arose later. Assuming the averments true, the right to sue accrued only in 2024, bringing the suit filed in 2025 within limitation. Whether the plaintiff had earlier knowledge is a mixed question of fact and law requiring evidence, not suitable for rejection at this stage.

16. In view of the above, none of the grounds for rejection under Order VII Rule 11 CPC are satisfied. The application is meritless and is accordingly dismissed.

#### **APPLICATION UNDER ORDER VI RULE 17 CPC**

17. It is well settled law that, where the amendment is sought before commencement of trial, the court is required to be liberal in its approach as the opposite party would have a chance to meet the case set up in amendment but, it shall not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment.

18. Hon'ble Supreme Court of India in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr*<sup>4</sup> after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:

*“70. Our final conclusions may be summed up thus:*

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<sup>4</sup> [MANU/SC/1093/2022](#)

- (i) *Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*
- (ii) *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.*
- (iii) *The prayer for amendment is to be allowed*
- (i) *if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
- (ii) *to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) *A prayer for amendment is generally required to be allowed unless*
- (i) *by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) *the amendment changes the nature of the suit,*
- (iii) *the prayer for amendment is malafide, or*
- (iv) *by the amendment, the other side loses a valid defence.*
- (v) *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in*

*rendering a more satisfactory decision, the prayer for amendment should be allowed.*

*(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

*(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

*(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

*(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)*

**(emphasis is mine)**

19. Careful consideration of the amendment sought by the plaintiff reveals that, the same duly satisfied the test laid down by Hon'ble Supreme Court of India in *LIC (Supra)*.

20. The original suit is for declaration that the gift deed is null and void, along with consequential reliefs while the proposed amendment introduces a prayer for cancellation of the gift deed, which is intrinsically linked to the declaration sought and does not alter the fundamental character of the suit. It merely formalizes the relief to align with the substantive claim. Further, the amendment in valuation ensures payment of proper court fee, which is in the interest of revenue and does not prejudice the defendants, as the plaintiff is willing to pay the deficient court fee. The application appears to be bona fide and not dilatory, especially since the suit is at a nascent stage. No serious prejudice has been demonstrated by the defendants. Accordingly, the application under Order VI Rule 17 CPC is allowed. Amended plaint is taken on record and the defendants shall file their amended written statements, if any, within 30 days thereafter.

21. List the matter for further proceedings on **15.03.2026**.

(SHILPI M JAIN)  
DJ-05 (SW)/Dwarka Courts  
New Delhi: 24.01.2026 (sk)