

**IN THE COURT OF SH SHIV KUMAR
ADDITIONAL DISTRICT JUDGE-02 (WEST),
TIS HAZARI COURTS, DELHI**

**Civ DJ No. 10045/16
CNR No. DLWTO1-00**

Indu Khurana

..... Plaintiff

Versus

Satish Khurana

....Defendant

ORDER

**ORDER ON APPLICATION UNDER ORDER 7 RULE 11 CPC
MOVED ON BEHALF OF DEFENDANT.**

1. Vide this order, I shall decide the application moved u/o 7 rule 11 (A) read with section 151 CPC filed on behalf of defendant no. 1.

2. The defendant has filed the above application mainly on the ground that the plaintiff has no cause of action to file the present suit. It is also averred that Sh. Pawan Sarin, LR of plaintiff has also no cause of action to file the present suit.

3. It is averred in the application that late Sh. T.L. Khurana, father of the parties to the suit, was the owner of the suit property as the said suit property was allotted to him. It is further averred that a lease deed

of the suit property was executed in favour of the late Sh. T.L. Khurana on 6.4.1950 and the same was registered on 26.5.1950 and thereafter a supplementary lease deed was executed in his favour.

4. It is further averred that after the execution of lease deed, late Sh. T.L. Khurana, had become the owner of the suit property. It is further averred that late Sh. T.L. Khurana expired on 2.08.1977 and left behind an unregistered Will dated 11.06.1968 by way of which life estate in the suit property was given to Smt. Uttam Devi and she was not entitled to alienate the suit property except for legal necessity to raise funds for performing marriage ceremonies of unmarried daughters. It is further averred that late Ms Indu Khurana alongwith her mother and all sisters executed release deed dated 12.12.1977 in favour of defendant no. 1 & 2.

5. It is further averred that Smt. Uttam Devi applied for mutation of the suit property and all the L.Rs of late Sh. T.L. Khurana gave their affidavits and acted upon the Will dated 11.06.1968, executed by late Sh. T.L. Khurana and fresh lease was executed in favour of Smt. Uttam Devi.

6. It is further averred that Smt. Uttam Devi was only having life interest in the suit property and she had no right to dispose off the suit property in any manner and after demise of Smt. Uttam Devi the suit property devolve upon defendant no. 1 & 2 and defendant no. 1 & 2 are the only owners of the suit property.

7. It is further averred that the suit property substituted in the name of Uttam Devi Khurana in books of L & DO department with the nothing that she will have only life estate in the property and she will have no right to dispose it off in any manner. It is further averred that in view of the life interest of deceased Uttam Devi in the suit property, the scope of the partition of the suit property in the present suit does not survive. It is further averred that plaintiff has no right, title or share in the suit property as per will dated 11.06.1968. It is further averred that plaintiff's suit is manifestly, vexatious, meritless and does not disclose a clear right to sue either in favour of Ms Indu Khruana or in favour of Sh. Pawan Sarin.

8. Per contra plaintiff has filed reply to the above application and denied all the contentions of the defendant no. 1 and has submitted that plaint of the present suit disclosed sufficient and valid cause of action and the said cause of action has specifically mentioned in para no. 19 of the plaint. It is further averred that the application of defendant no. 1 be dismissed with heavy cost.

9. Arguments heard. During arguments ld. Counsel for the parties have also filed written submissions and the same are duly considered. Case file perused.

10. In a Judgment titled as P.V. Gururaj Reddy and Anr. Vs P. Neeradha Reddy and Ors. (2015) 8 SCC 331 decided on 13.02.2015, the Hon'ble Supreme Court observed that rejection of plaint under order 7 rule 11 CPC is a drastic power confer on the court to terminate a civil action at a threshold therefore, the conditions precedent to the exercise of the power are stringent and it is especially so then rejection of plaint is sought on the ground of limitation. It is further observed by the Hon'ble Apex court that when a plaintiff claims that he gain knowledge of the essential facts giving rise to cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under order 7 rule 11 CPC.

11. It is settled law that for deciding an application u/o 7 rule 11 CPC, the Court has to examine only the averments made in the plaint as well as documents attached with the plaint. The plaint is required to be read as whole and the pleas taken by the defendant in the written statement as well as in the application u/o 7 rule 11 CPC cannot be considered for deciding the application.

12. It is admitted case of the parties that the suit property was allotted in the name of deceased late Sh. T.L. Khurana and thereafter a lease deed was executed in his name. It is also admitted case of the parties that Sh. T.L. Khrurana died leaving behind an unregistered will dated 11.06.1968. It is also admitted case of the parties that late Smt. Uttam

Devi had applied for mutation of the said property and all the L.Rs of late Sh. T.L. Khurana and defendants have given their affidavit in favour of late Smt. Uttam Devi and also relied upon Will dated 11.06.1968 and thereafter the suit property was mutated in favour of Smt. Uttam Devi and lease deed was executed in her favour on 6.4.1950.

13. The case of the defendant no. 1 is that in the Will dated 11.06.1968 only life interest in the suit property was bequeathed to Smt. Uttam Devi and they gave affidavit in favour of Smt. Uttam Devi for mutation of property in her favour and thereafter lease deed was also executed in her favour subject to condition that she has only life interest in the suit property.

14. The Id. Counsel for defendant no. 1 has argued that Smt. Uttam Devi was not the absolute owner of the suit property and she had only life interest in the suit property so she cannot alienate, transfer or bequeath the suit property to anyone. It is further argued that plaintiff alongwith her mother and all the sisters had executed release deed in favour of defendant no. 1 & 2 foregoing all their rights, title and interest in the suit property in favour of defendant no. 1 & 2.

15. It is further argued that Ms Indu Khurana has no right, title and share in the suit property so she cannot bequeath any right, title and

share in the suit property by of Will in favour of Sh. Pawan Sarin. It is further argued that neither Ms Indu Khurana nor Sh. Pawan Sarin has any right, title and interest in the suit property and they have no cause of action to file the present suit.

16. I have perused the Will dated 11.06.1968. In the Will, it is mentioned that life interest has been given to Smt. Uttam Devi W/o deceased Sh. T.L. Khurana. Ld. Counsel for the plaintiff has argued that due to section 14 (1) of Hindu Succession Act the life interest has been converted into absolute interest and Smt. Uttam Devi had become the absolute owner of the suit property. He further argued that defendants alongwith other L.Rs have given affidavit for mutation of the suit property in the name of Smt. Uttam Devi and fresh lease deed was also executed in her name and due to execution of fresh lease deed, she also became owner of the suit property.

17. It is argued by Id. Counsel for the plaintiff that it cannot be said that Smt. Uttam Devi was not owner of the suit property. He further argued that Smt. Uttam Devi was owner of the suit property as per mutation record and she had also entered into a fresh lease deed with the concerned department. In the present suit issues have already been framed 03.09.2016 and issue no.2 is that whether Smt. Uttam Devi have become absolute owner of the suit property by virtue of lease deed dated 31.12.1982? and issue no. 5 is that, Whether the plaintiff is

entitled for decree of declaration that the release deed dated 12.12.1977 are not binding upon the plaintiff? It is a matter of trial, whether Smt. Uttam Devi had become the owner of the suit property or not by virtue of lease deed dated 31.12.1982 and issue regarding this has already been framed. Moreover, late Smt. Indu Khurana is claiming interest in the suit property. If late Sh. T.L. Khurana has bequeathed only life estate to Smt. Uttam Devi even then she has share in the suit property as one of the L.Rs of late Sh. T.L. Khurana. If it is presumed that Smt. Uttam Devi had become the owner of the suit property even then she has right in the suit property being one of her legal heir.

18. The contention of defendant no. 1 that plaintiff alongwith her mother and all the sisters have already executed a release deed of their share in favour of defendant no. 1 & 2. For this contention, it is pertinent to mention that in the present suit, the plaintiff has also challenged the release deed dated 12.12.1977 on the ground that the release deed was executed by the plaintiff after the death of his father while she was recovery from the emotional void that the death of her father had created and issue no. 5 regarding not binding of release deed upon the plaintiff has also already been framed. So without trial, it cannot be held that the plaintiff has released her share in favour of defendant no. 1 & 2 and this contention can be decided at the time of final adjudication of the present suit.

19. In para no. 19 the plaintiff has clearly mentioned the cause of action that the cause of action first time arose to the plaintiff when Smt. Uttam Devi expired on 2.08.2005 and thereafter on 6.09.2008 when the plaintiff approached the Police Station seeking protection when she was threatened to be evicted from the suit property and thereafter on 4.01.2006 when defendant no. 1 & 2 applied for mutation of the suit property in their name and thereafter 7.1.2011 when defendant filed a writ petition before the Hon'ble High Court seeking directions against L & DO to substitute their name in place of Smt. Uttam Devi . Hence, prima facie cause of action lies in favour of the plaintiff to file the present suit.

20. Hence, in view of the above observation and discussion, there is no merit in the application of the defendant no. 1 Accordingly, application under order 7 rule 11 CPC is dismissed.

**Announced in the open court on
18th January, 2024**

**(SHIV KUMAR)
ADJ-02, WEST
TIS HAZARI COURT
DELHI**