

24 Civ DJ 415/24

**NEELAM KOCHHAR Vs. KAMLESH KUMARI MATTA ALIAS MS
KAMLESH BHATIA**

22.01.2026

Present Shri Karan Sinha, Ld. Counsel for plaintiff through VC.

Shri Parsoon Kumar, Ld. Counsel for defendant through VC.

Order on application under Order 39 Rule 1 and 2 CPC

1. The Plaintiff, a 71-year-old senior citizen, claims to be the owner of the right-hand-side terrace above the first floor at Punjabi Bagh, Delhi, on the basis of a registered gift deed dated 29.01.2001 executed by Defendant No.1, conferring ownership, construction and transfer rights in her favour. It is pleaded that after earlier intra-family disputes and a relinquishment deed in 1995, a family settlement in 2000 culminated in the said registered gift deed, pursuant to which the Plaintiff remained undisputed owner for over 23 years. The grievance is that in February 2024 defendant No.1 issued a notice purporting to deny title and unilaterally revoke the gift, and the defendants have allegedly put their own lock on the terrace and are negotiating with builders to create third-party rights.

2. The defendants, in reply, have raised objections as to limitation, valuation, non-joinder of parties, maintainability under the Specific Relief Act, and alleged suppression of facts, besides asserting that the plaintiff relinquished her rights in 1995 for consideration and is not in possession. They contend that the suit is barred by time in view of the 2001 gift deed,

is bad for want of cause of action against defendant No.2, is undervalued given the alleged market value exceeding Rs. 4 crores, and that several co-heirs have not been impleaded.

Principles for temporary injunction

3. The Hon'ble Supreme Court in “*Hindustan Petroleum Corporation Ltd. v. Sriman Narayan, AIR 2002 SC 2598*” has held that object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty was resolved in his favour at the end of the trial. It was also held that balance of convenience should also be determined. While exercising the discretion, the Court normally applies the following tests:-

- (i) That a strong prima facie case is made out in his favour.
- (ii) That the balance of convenience also lies in his favour.
- (iii) That the refusal of injunction will cause irreparable injury to him.

4. This position is settled by the Hon'ble Supreme Court in: *Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719, Maharwal Khewaji Trust v. Baldev Dass, (2004) 8 SCC 488.*

The relief at this stage is discretionary and intended to preserve the subject matter and maintain *status quo*, without finally deciding disputed rights.

Prima facie case

5. The Plaintiff relies on a registered gift deed of 29.01.2001 which, on its face, records that defendant No.1, out of love and affection, gifted the suit terrace to the plaintiff with full ownership and construction rights.

A registered gift deed carries a presumption of genuineness and valid transfer unless duly set aside in appropriate proceedings, and unilateral revocation through a legal notice does not, by itself, divest the donee of title. The fact that the plaintiff's earlier relinquishment was followed by a subsequent family settlement and a registered gift in her favour, coupled with long, undisputed enjoyment for over two decades as pleaded, is sufficient at this interlocutory stage to disclose a triable issue regarding her title to the suit terrace.

6. The preliminary objections as to limitation, valuation, non-joinder and alleged consideration for the 1995 relinquishment raise mixed questions of fact and law that require evidence and cannot be conclusively adjudicated at the stage of an application for temporary injunction. At this stage, the Court is not required to return any final finding on the validity of the relinquishment deed, the family settlement or the gift deed, but only to see whether the plaintiff's claim is not frivolous or vexatious, which condition stands satisfied on the pleadings and documents referred to. The plea that there are no specific averments against defendant No.2 also pertains to maintainability of the suit against her and does not, by itself, efface the plaintiff's *Prima facie* title flowing from the registered gift.

7. Accordingly, a *Prima facie* case in favour of the plaintiff, at least to the extent of preservation of the suit property from alienation and fresh construction during pendency of the suit, stands made out.

Balance of convenience and irreparable injury

8. The plaintiff has pleaded that the defendants have already put their

lock on the suit terrace and are negotiating to sell or enter into collaboration agreements with builders, which may result in transfer of the property and creation of third-party rights. If, during the pendency of the suit, the defendants are permitted to alienate or encumber the property or to raise construction, the subject matter may be irreversibly altered and multiplicity of proceedings with third parties may ensue, causing injury which cannot be adequately compensated by damages.

9. On the other hand, if the defendants are restrained only from selling, transferring, encumbering or raising new construction, but are allowed to contest the suit on all available grounds, they do not suffer any comparable prejudice, as their alleged rights can be adjudicated upon at trial without being defeated by the interim order. The balance of convenience, therefore, leans in favour of an order preserving the existing state of affairs and preventing creation of third-party interests, rather than allowing potentially irreversible changes in the interregnum.

Court findings and Order

10. In view of the foregoing discussions, the application under Order XXXIX Rules 1 and 2 CPC is partly allowed as under:

(i). The defendants, their agents, representatives and anyone claiming through them are restrained from selling, transferring, alienating, mortgaging, parting with possession of, entering into any collaboration agreement in respect of, or otherwise creating any third-party interest in the suit terrace property, i.e., the right-hand-side terrace above the first floor of the property at Punjabi Bagh, Delhi, as described in the plaint, till disposal of the suit.

(ii) The defendants are further restrained from raising any new construction, additions or alterations on the suit terrace which may change the nature and character of the property during pendency of the suit.

(iii). Insofar as the rival allegations regarding present physical possession and locks on the suit terrace are concerned, the same involve disputed questions of fact which shall be decided on evidence, and no mandatory direction for restoration of possession or for putting any particular lock is passed at this interlocutory stage. However, both parties shall maintain *status quo* with respect to possession and existing locks as obtaining on the date of this order and shall not interfere with each other's access except in accordance with law or further orders of the Court.

(iv). All objections as to limitation, valuation, Court-fees, non-joinder/mis-joinder of parties, bar under the Specific Relief Act and maintainability of the suit, as raised in the written statement and reply, are kept open to be adjudicated at the appropriate stage. Nothing stated herein shall be construed as an expression of final opinion on those issues.

11. The application is accordingly disposed of in the above terms. No order as to costs at this stage. At this stage, Ld. Counsel for defendant has moved an application under Order 7 Rule 11 CPC for rejection of plaint. Copy supplied.

Ld. Counsel for plaintiff submits that within two weeks he will file reply to the application.

Reply, if any to the application be filed by the plaintiff within 14 days with advance copy to the Ld. Counsel for opposite party.

Put up for arguments on the application under Order 7 Rule 11
CPC for 17.04.2026.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/22.01.2026