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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 413/2024, I.A. 29447/2024 & I.A 32728/2024**

RUPA SHARMA

.....Plaintiff

Through: Ms. Shalini Kaul, Adv.
versus

DEEPAK KRISHAN TEWARI AND ANRDefendants

Through: Mr. Ashutosh Nagar, Mr. Kunal
Taneja and Mr. Ishan Harlalka, Advs.
for defendants

35.

+ **CS(OS) 455/2024**

DEEPAK KRISHAN TEWARI & ANR.

.....Plaintiffs

Through: Mr. Ashutosh Nagar, Mr. Kunal
Taneja and Mr. Ishan Harlalka, Advs.

versus

MRS RUPA SHARMA & ANR.

.....Defendants

Through: Ms. Shalini Kaul, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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10.07.2024

I.A. 32784/2024 in CS(OS) 413/2024 (under Order 39 Rule 4 read with Section 151 CPC filed by the defendant)

1. The present application has been filed under Order 39 Rule 4 read with Section 151 CPC filed by the defendant for setting aside the order dated 17.05.2024.
2. Issue notice.
3. The learned counsel appearing on behalf of the plaintiff / non-



applicant accepts notice.

4. Let reply to the application be filed within a period of four weeks from today.

5. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

6. Re-notify on 09.10.2024.

I.A 32727/2024 in CS(OS) 413/2024 (under Section 151 CPC seeking clarification of order dated 17.05.2024 by the defendants)

7. The present application has been filed seeking clarification of order dated 17.05.2024 passed by this Court.

8. Issue notice. The learned counsel appearing on behalf of the plaintiff / non-applicant accepts notice.

9. Let reply to the application be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

10. Re-notify on 09.10.2024.

I.A. 30873/2024 in CS (OS) 455/2024 (under Order XXXIX Rule 1 & 2 r/w Section 151 CPC by plaintiffs from creating any hindrances) & I.A. 30874/2024 in CS (OS) 455/2024 (under Order XXXIX Rule 1 & 2 r/w Section 151 CPC by plaintiffs from creating any third party interest)

11. Ms. Shalini Kaul, Advocate enters appearance on behalf of the defendants and prays for time to file reply to the applications.

12. Let the same be filed within a period of two weeks.

13. Rejoinder thereto, if any, be filed within a period of one week thereafter.

14. Re-notify on 09.10.2024.



CS (OS) 413/2024 & CS(OS) 455/2024

15. The learned counsels for the parties in both the above noted suits jointly submit that the subject matter in the two suits is same, therefore, both the suits may be consolidated.

16. The property bearing No. A-6/12, Poorvi Marg, Vasant Vihar, New Delhi – 110057 was allotted to Col. K.K. Tewari, who passed away on 04.01.2015 and he was survived by the following class I Legal Heirs:

- (i) Mrs. Sarla Tewari (widow);
- (ii) Mr. Deepak Krishan Tewari (son); and
- (iii) Mrs. Rupa Sharma (daughter).

17. The suit bearing No. CS (OS) 413/2024 has been filed by the daughter of Col. K.K. Tewari. The plaintiff in this said suit has set up a Will dated 24.07.2003, on the basis of which she claims share in the aforesaid property to the extent of 50%. However, the case of the defendant no. 1 namely, Deepak Krishan Tewari - son of Late Col. K.K. Tewari, is that on the basis of the Will of the father of the parties, the property was mutated in the name of their mother and she executed a gift deed dated 25.04.2024 in favour of defendant no. 1.

18. The plaintiff in the present suit has *inter alia* sought a decree of declaration declaring that the alleged gift deed dated 25.04.2024 is null, void, illegal and fraudulent.

19. CS (OS) 455/2024 has been filed by the son Late Col. K.K. Tewari namely, Deepak Krishan Tewari alongwith the mother of the parties.

20. In this suit, the plaintiff no. 1 has claimed his rights in the said property on the basis of aforesaid gift deed dated 25.04.2024 alleging that



Ground Floor, First Floor, Third Floor and the Terrace rights of the aforesaid property were given to him by his mother (plaintiff no. 2) by virtue of said gift deed.

21. In this suit the prayer is for passing decree of possession against the defendants which includes the sister of plaintiff no. 1 and her husband, *qua* the Ground Floor and Basement of the property.

22. It is thus, evident that the parties in both the aforesaid suits are substantially the same. The subject matter of both the suits is the same property. The issues arising for the decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for determining the issues of facts and law arising for decision in the two suits.

23. Thus, there will be duplication of recording of evidence if separate trials are held. Therefore, it would be in the interest of justice that the two suits are tried together.

24. In view of the above, both the suits are consolidated for being tried together.

25. List before the Joint Registrar on 09.10.2024 for completion of pleadings, admission / denial of documents and marking of exhibits on 09.10.2024.

26. Interim orders in both suits to continue.

VIKAS MAHAJAN, J

JULY 10, 2024/N.S. ASWAL