



\$~O-11

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

+ CS(OS) 457/2020, I.A. 7088/2023, I.A. 38565/2024, I.A. 39934/2024
& I.A. 7584/2025

MS. ARUN SAINI @ GUDDI (NEE ARUN BALA JAIN)

.....Plaintiff

Through: Mr. Tarun Diwan, Adv.

versus

SHRI NIRMAL KUMAR JAIN & ANR.

.....Defendants

Through: Mr. Dinesh Agnani, Sr. Adv. with
Ms. Leena Tuteja, Adv. for D-1.
Ms. Suruchi Mittal, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

%

07.04.2025

**I.A. 24128/2023 (filed on behalf of defendant No.1 for rejection of the
plaint)**

1. Heard.

2. The instant application has been filed under Order VII Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908, for rejection of the plaint. The instant application is primarily filed on two grounds, i.e., (i) non-payment of the adequate court fees, and (ii) no cause of action has arisen in favour of the plaintiff.

3. Mr. Dinesh Agnani, learned senior counsel appearing on behalf of defendant No.1 submits that defendant no.1 is the son of late Sh. Girdhari Lal Jain and the plaintiff happens to be the sister of defendant No.1.

4. He contends that during the lifetime of the late Sh. Girdhari Lal Jain,



a sale deed was executed in the year 2005 in favour of defendant No.1 with respect to the suit property. It is further submitted that Shri Girdhari Lal Jain passed away in the year 2019.

5. In light of the aforesaid, it is contended that, firstly, if the plaintiff is seeking the relief of cancellation of the sale deed, they are mandatorily required to pay the appropriate court fees in accordance with law. Secondly, it is contended that since the sale deed was executed in favour of defendant No.1 during the lifetime of Shri Girdhari Lal Jain, no surviving cause of action remains with the plaintiff to now seek partition of the suit property.

6. The aforesaid statements are vehemently opposed by Mr. Tarun Diwan, learned counsel appearing for the plaintiff. According to him, he is ready to make the payment of court fees *qua* the prayer for cancellation of the sale deed.

7. He, however, contends that so far as the cause of action is concerned, he reiterates the averments made in the plaint to emphasise that the sale deed itself was perpetuated on fraud and misrepresentation.

8. The Court has perused the relevant paragraphs of the plaint and on perusal thereof finds that the plaintiff has made certain averments to the extent of stating that the sale deed was executed by playing fraud and misrepresentation.

9. It is, thus, seen that under the aforesaid facts, without expressing any final opinion on the submissions made by the parties, the Court finds that the instant case is not one where no cause of action subsists.

10. So far as the court fees is concerned, though the Court *vide* order dated 17.02.2023 had directed the plaintiff to make the payment of court fee, however, in the interest of justice and to enable the plaintiff to make the



payment of the necessary court fee, three weeks further time is granted.

11. So far as the other submissions as to whether the plaintiff is required to make the payment of court fee on the basis of the market value of the property is concerned, all those aspects shall be open to be agitated during the trial and the Court shall consider to pass appropriate order while framing the issues.

12. Application stands disposed of.

I.A. 38029/2024 (filed on behalf of the plaintiff seeking leave of the Court to take documents on record)

13. Mr. Tarun Diwan, learned counsel appearing for the plaintiff, contends that *vide* diary No. 1967382/23, the documents were placed on record on 27.10.2023 i.e., much before the filing of the replication.

14. Mr. Dinesh Agnani, learned senior counsel prays for time to inspect the file and to make submissions.

15. List on 08.05.2025.

APRIL 07, 2025/P/MJO

PURUSHAINDR KUMAR KAURAV, J

Click here to check corrigendum, if any