



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

% *Reserved on: 24th January 2025.*

Pronounced on: 27th February 2025.

+ **CS(OS) 298/2023 I.A. 9301/2023 I.A. 11469/2023 I.A. 11470/2023**

DR JITENDER FOTEDARPlaintiff

Through: Mr. Balwant Singh Billowria and Mr.
Akshay Singh, Advocates.

versus

RATAN RANI FOTEDAR & ORS.Defendants

Through: Ms. Sonia A. Menon, Adv. for D-1 to 4.
Mr. Gopal Verma with Mr. Piyush
Singh, Advocates for D-5.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 11470/2023 (Application under Order VII Rule 11 CPC)

1. This application has been filed under Order VII Rule 11 (a)(c) of the Code of Civil Procedure, 1908 (“*CPC*”), seeking rejection of the plaint. Plaintiff filed the suit against defendants seeking cancellation of the gift deed executed by the *mother* (defendant no.1) in favour of her *son* (defendant no.2).



2. The crux of the case, as per plaintiff, is that defendant no.1 was not competent to execute the subject gift deed as she is suffering from ‘*Dementia*’ and ‘*Alzheimer’s*’.

3. Rejection of the plaint is sought on two grounds – (i) That proper *ad valorem* Court Fees have not been paid, and have been avoided by the plaintiff by claiming joint possession, which, as per plaint, is not borne out; (ii) That there is no cause of action since the allegation that defendant no.1 was medically incapacitated and suffering since 2015 was not substantiated by any medical document.

4. The suit seeks cancellation of registered gift deed dated 03rd February 2023, executed by *Smt. Rattan Rani Fotedar* (defendant no.1) in favour of her son *Sh. Arun Fotedar* (defendant no.2), regarding *property bearing no. B-67, Block -B , Pocket No.9 Sector 23, Dwarka Residential Scheme, Dwarka, New Delhi (“suit property”)*, which was purchased from *Ms. Pooja Mehta*, Daughter of *Sh. Jeth Mall Mehta vide* registered sale deed dated 01st September 2018.

5. Defendant No.1 has five children namely:

NAME	RELATION	PARTY
Girjadhar	Daughter	Defendant No.3
Rashmi Shali	Daughter	Defendant No.4



Dr. Jitender Fotedar	Son	Plaintiff
Arun Fotedar	Son	Defendant No.2
Sanjay Fotedar	Son	Defendant No.5

6. The recital of the gift deed stated that it was executed by defendant no.1 in favour of defendant no.2 out of natural love and affection, and that defendant no.2 was fully looking after defendant no.1 and taking care of her needs.

7. Plaintiff however contends that the gift deed was silent as to why plaintiff and other siblings were left out of consideration, despite that *Mr. Sanjay Fotedar* (defendant no.5) and *Dr. Jitender Fotedar* (plaintiff) (who is a senior doctor at *Medanta Hospital*) were looking after the needs of defendant no.1.

8. Plaintiff alleged that at the time of the execution of the gift deed, defendant no.1 was aged about *86 years* and was a serious patient of *Alzheimer's* disease and *Dementia*, and other related ailments. She also suffered during COVID-19 in April 2021, with involvement of lungs, and her oxygen level dropped to as low as 78%. As no hospital beds were available during the *pandemic*, plaintiff started defendant no.1's treatment at home, without caring about his own family. Defendant No.1 was admitted to *Medanta Hospital* in the last week of April, and after discharge, she developed post-COVID-19 complications, including *hepatitis*, *pancreatitis*, and *heart failure*, leading to her re-admission for three weeks, which was life-saving.



9. Plaintiff, defendant nos.2-5 are children of defendant no.1 *and Late Sh. Makhan Lal Fotedar*, who was initially domiciled in Kashmir and migrated to Delhi around 1980. Plaintiff alleged that *Late Makhan Lal Fotedar* expired on 28th September 2017. Plaintiff alleges that *Late M.L. Fotedar* purchased properties in the names of his *wife* and *daughter* from the family funds, in which plaintiff had substantial investments. *Plot No.1/587, Vaishali Ghaziabad* was bought by the *deceased* on 04th September 1998, in the name of defendant no.1, *his wife*. The said plot was sold on 03rd May 2016, and proceeds were invested in purchasing the *suit property*. It is, therefore, contended that the *suit property* was bought by the *deceased* using the family funds, giving the plaintiff a right in the same, and he apprehends that the gift deed is being used as a tool to encroach upon his rights. The gift deed was executed on 03rd February 2023 while she was suffering from progressive memory loss, loss of cognition and frail medical condition.

Submissions on behalf of counsel for defendant

10. Defendant's counsel pointed out that a bare reading of the plaint would bear out that, despite the assertions made by the plaintiff (as noted above), no proof was submitted by the plaintiff to substantiate these claims. Neither was there any proof of investment of family funds, nor was there any medical record provided since 2015 till 2023, except for the post-COVID-19 record in 2021, to prove the medical condition of the *mother*. Moreover, the plaintiff did not challenge the purchase of the *suit property* in 2018 or the sale of the *Ghaziabad plot* in 2016.



11. Defendant's counsel relied upon Section 14 of the Hindu Succession Act, 1956, ("*HSA*") to state that any property purchased in the name of defendant no.1 had the character of self-acquired personal property, and she was fully empowered to exercise her ownership rights.

12. Further, the plaintiff must substantiate his claim regarding joint possession. The gift deed, explicitly states that possession was handed over to defendant no.1, which was a registered document, negating the claim of joint possession.

Submissions on behalf of counsel for plaintiff

13. Plaintiff's counsel stated that the application filed by defendant is untenable, as the issues raised are disputed and do not create a legal bar on maintaining the suit. He contended that defendant no.1 was a '*homemaker*' and, therefore, any property purchased through family funds could not be dealt with by her independently.

14. Notwithstanding this, and without prejudice to the same, the gift deed executed by defendant no. 1 would be infirm and treated as null & void considering she was not in the proper state of mind for executing the gift deed and understanding its implications.

15. The issue as to why the plaintiff did not challenge the 2016 and 2018 transactions was primarily because defendant no.1 was a case of progressive *Alzheimer's* and *Dementia*, which does not deteriorate overnight but gradually worsens.



16. The disease is progressive, and thus, the execution of the gift deed in 2023 is questionable. A prescription dated 15th June 2021 from *Medanta Hospital* indicating plaintiff's health situation cannot be doubted, particularly since it has been issued by a responsible doctor, *Mr. Arun Garg*, who works in plaintiff's hospital.

17. The issue of joint possession arises from the presumption that the property belonged to the legal heirs of the late father and was bought using funds acquired by the sale of the family properties in Kashmir. Medical document dated 15th June 2021, signed by *Dr. Arun Garg*, records the patient's history of having *Alzheimer's disease*, progressive memory loss, and prescribed medication. The Magnetic Resonance Imaging report (MRI) of the brain concluded findings are suggestive of cerebral atrophy with chronic cerebral white matter ischemic changes and chronic lacunar infarcts with gliosis in bilateral basal ganglia and thalami.

18. Plaintiff's counsel relied upon a decision of High Court Judicature at Allahabad at Lucknow Bench in *Saurav Gupta v. Archana Gupta* delivered on 15th February 2024, in the first appeal against an order passed by the Trial Court. There is an observation by the Court that the husband can purchase a property in the name of his wife as a gift to her to make her the absolute owner of that property but that would only be determined after evidence is adduced. The property once purchased by a Hindu husband in the name of his wife who was a home maker the property will be deemed to be purchased by the husband himself from his sources unless the contrary is proved.



Submissions in Rejoinder by defendant

19. The gift deed itself in Clause 2, states “*that the donor has delivered the possession of the said property to done by means of this gift deed*”. Counsel for defendant also handed over the photographs of the suit property showing that it was in possession of defendant no.2. Electricity bills were also part of the documents handed over, showing that the bills had been paid. However, it is noted that the electricity bill is in the name of *Late Sh. M.L. Fotedar*. It is also pointed out that the late father, *Sh. M.L. Fotedar* died on 28th September 2017, and even as per plaint, the property was purchased from *Ms. Pooja Mehta* on 01st September 2018. Therefore, the presumption, in any event, would be that it was a self-acquired property by defendant no.1. In 1998, another property in Ghaziabad was also bought in the name of the *wife*, defendant No.1. The sale in 2016, if Alzheimer’s was detected in 2015 in defendant no.1, ought to have been challenged as well. Reliance was placed on the decision of this Court in *Anita Anand v. Gargi Kapoor & Ors.*, 2018:DHC:6076, to canvass that a meaningful reading of averments in the plaint shows that the plaintiff admits ouster by the defendant based on the denial of the plaintiff’s right, title or interest in the property. Therefore, the plaintiff is mandated to pay *ad valorem* Court Fees. Clever and ambiguous nature of pleadings will not save the plaintiff from liability. In *Anita Anand (supra)*, a declaratory relief along with a consequential relief had been sought.

20. Based upon *Surhid Singh v. Randhir Singh & Ors.*, (2010) 12 SCC 112 the Court in *Anita Anand (supra)* stated that if the plaintiff was seeking



declaration of gift deed as null & void and was not in possession, then, as per Section 7 (iv) (c) of the Court Fee Act, 1870, they were liable to pay *ad valorem* Court Fees.

21. Counsel for defendant stated that they were pressing their case only on the issue of Court Fees, as the other aspects relating to the circumstances in which the deed was executed by defendant No.1 could be determined at the time of trial.

22. It is also contended that the plaintiff has been ungrateful and dishonest. Plaintiff, defendant no.2 and defendant no. 5, being sons of defendant No.1, are living in the same property in *Gurugram*, although the property is owned by defendant no.2 and defendant no.5 in equal proportion. The plaintiff is living in part of the first floor as a licensee, which stood terminated in June 2021. Post-COVID complications, the plaintiff, in collusion with defendant no.5, threw out the belongings of defendant no.1 from the master bedroom of the first floor and took possession, which otherwise falls to the share of defendant no.2. Defendant No.1's shelter was provided by her daughters, defendant nos.3 & 4. The possession of the master bedroom was restored to defendant no.1 by virtue of orders of Division Bench of this Court in *W.P.(C) 476/2022 (Rattan Rani Fotedar v. Union of India & Ors.)* in which the plaintiff and the other defendants were also parties. Defendant No.1 is being looked after by defendant no.2 and his family for all physical and medical needs. As per the submissions filed by the plaintiff, various litigations had been initiated by defendant no.1 against the plaintiff, which are extracted as under:



“a. W.P.(C) 476/2022 – Rattan Rani Fotedar Vs. UOI & Ors.

b. Contempt Petition No. 123/2022 – Rattan Rani Fotedar Vs. Dr. Jitender & Sanjay.

c. C.S 3137/2022 – Rattan Rani v. Dr. Jitender (Suit for possession of master bedroom under Section 6 of SPA in District Court of Gurugram).

d. CS/22 – Suit for rendition of accounts against defendant No.5.”

Analysis

23. The assessment and determination by this Court is limited to the plea raised by the defendant regarding the insufficiency of Court Fees paid by the plaintiff. While the plaintiff claims joint possession of the suit property, defendant claims ownership and possession by virtue of the registered gift deed of 03rd February 2023 executed by the mother (defendant No.1) in favour of son (defendant no.2). In the opinion of this Court, the claim of joint possession is unmerited and untenable for a host of reasons, *inter alia*, that the plaintiff is a non-executant to the gift deed, which he seeks to “cancel”; consequential possession has not been sought; lack of proper substantiation in the plaint; no proof that the property was purchased with the funds of late father, which would divest the mother of her rights; applicability of Section 14 of HSA. Each of these aspects are dealt with as under.

Cancellation of the gift deed

24. Some illumination on this issue is thrown by the decision of the Supreme Court in *Surhid Singh* (*supra*). The matter concerned a claim where the



plaintiff sought a declaration that lands purchased by the father were coparcenary properties and purchased from sale proceeds, and that the sale deeds executed by the father in favour of defendants were null & void. Plaintiff had paid fixed Court Fees. However, the Trial Court held that *ad valorem* Court Fees were payable on the same consideration in respect of the sale deeds since cancellation was sought. The High Court dismissed the revision petition. The matter reached the Supreme Court, and the Court stated as under:

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a



declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.

8. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

9. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the “coparcenary” and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under Section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.”

(emphasis added)

25. It was thus made clear that if the plaintiff is a non-executant to the deed, which sought to be set aside, he has to seek relief by declaring the deed null & void and then seek consequential relief for possession. Only an executant of a deed can seek its cancellation. In the case of a non-executant, the declaration of invalidity, as also the consequential relief of possession, could invite an *ad valorem* Court Fees under Section 7 (iv)(c) of the Court Fees Act.



26. *Surhid Singh* (*supra*) was relied upon by this Court's decision in *Anita Anand* (*supra*), where it was noted that the plaintiff in that case was not in possession of the suit property and, therefore, *ad valorem* Court Fees had to be paid.

Consequential relief of possession

27. The relief sought by the plaintiff would be consequential to the declaration of the gift deed as illegal. Until the gift deed stands in the name of the executant, the plaintiff would not be entitled to the property. It is noted that the plaintiff has sought the relief simpliciter of cancellation of the registered gift deed. *Firstly*, the relief as sought ought to be for declaring the gift deed as 'null & void' in terms of the decision in *Surhid Singh* (*supra*); and *secondly*, the consequential relief to declaration is necessarily implicit in the frame of the suit. By omitting to sue for a consequential relief, plaintiff is not only in dissonance with Section 34 of the Specific Relief Act but also in the principles of Order II Rule 2 of the CPC, the said provisions are extracted hereunder for ease of reference:

“Section 34. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.



Explanation. --A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

.....

Order II Frame of Suit

2. Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish a portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) *Relinquishment of part of claim.*—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

Averments in the plaint

28. Be that is it may, even if the plaintiff amends the scope of the relief, his assertion that they were in joint possession has to be examined based on the averments made in the plaint. The plaint contains a stray averment in *paragraph 9* stating that the plaintiff is in joint possession of the suit property.



There is no other assertion or substantiation in this regard. Notably, the property was bought by registered sale deed in the name of defendant no.1, the plaintiff's mother in September 2018, after the death of the father in September 2017. This, in itself, persuades the Court to presume that the property was self-acquired and personal property in the name of defendant no.1. This purchase in 2018 by defendant no.1 was never challenged by the plaintiff, *her son*, who does not deny being in touch with his mother throughout, particularly in 2021 during COVID-19, when he claims that he provided her with personal medical treatment.

29. *De hors* the aspect of the gift deed being declared null & void, which will be a question of trial, post the acquisition of the property by the mother/defendant no.1 in 2018, there is not a whisper of challenge by any of the children; it, therefore, cannot be simply accepted that the plaintiff was in joint possession. Post the gift deed, defendant no.2 claims to be in possession of the property, as exhibited by the photographs handed up in the Court; however, considering that they do not form part of suit record yet, they are not being accounted for by the Court. What is evident is that a bare reading of the plaint itself, without reference to the plea taken by the defendant, has to be seen for the purposes of Court Fees.

30. Reference in this regard may be made to the decision of this Court in *Shushma Tehlan Dalal v. Shivraj Singh Tehlan*, 2011 SCC OnLine Del 1156, the following paragraphs being instructive:



“12. The following legal proposition of law emerges from the above-referred decisions:

(i) In order to ascertain whether the suit has been properly valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the defendants;
(ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 7(vi) of Court-fees Act. (iii) If the averments made in the plaint show that the plaintiff has been completely ousted from possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property.”

(emphasis added)

31. This was cited with approval by the Division Bench of this Court in ***Bakshish Singh Chandhok v. Bhavjot Singh Chandhok*** 2024 SCC OnLine Del 6124, where it was held based on the above principles, as under:

“8. From the aforesaid averments, it is apparent that there is declaration of hostile animus by the Respondent-Defendant, who is in long and uninterrupted possession of the suit property and who also claims to exercise the right of exclusive ownership openly and to the knowledge of other co-owners i.e. Appellants-Plaintiffs. Consequently, the triple test relied upon by learned counsel for the Appellants is satisfied in the present case.”

(emphasis added)

Absolute interest of mother



32. The plaintiff claims that the property, having been purchased out of the funds by the late father, would entitle the plaintiff to have a share in the property and divest the mother, defendant no.1, of the right to deal with the same, despite the sale deed being in her name. These mixed questions of fact and law would have to be considered during the trial and cannot be determined at this stage. However, it is highlighted that the impugned gift deed, of which cancellation is sought, is a registered document which, therefore, is clothed with the presumption of validity.

33. Even otherwise, Section 14 of the HSA gives defendant no.1 full rights of ownership. Section 14 of the HSA is extracted as under:

“Section 14. Property of a female Hindu to be her absolute property.

—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.

—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a



civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

34. In **V. Tulasamma and Ors. v. Sesha Reddy** (1977) 3 SCC 99, Justice P. N. Bhagwati speaking for himself and Justice A.C. Gupta, adverted to Section 14 of the HSA, its wide ambit and scope, and the concept of absolute ownership in the hands of female Hindu, covering all kinds of property which is acquired by her. In this regard, *paragraph 68* is instructive, which is extracted as under:

“68..... Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words “any property” are, even without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include “both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement” of the Act. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female



suffered in regard to ownership of property under the old Shastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognise her status as an independent and absolute owner of property....”

(emphasis added)

35. Even, as per the principal opinion given by Justice Fazal Ali in *V. Tulasamma* (*supra*), it was observed as under:

“62..... (1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights. (2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.



(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(emphasis added)

Presumption of validity

36. The Court would like to emphasize that even in a *prima facie* assessment at this stage, the Court cannot ignore the presumption of validity of a registered document. The Supreme Court in ***Prem Singh and Ors. v. Birbal & Ors*** (2006) 5 SCC 353, observed as under:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

(emphasis added)

37. Even in ***Suraj Lamps & Industries (P) Ltd. v State of Haryana*** (2009) 7 SCC 363, the Court expounded on the advantages of registration. Relevant paragraph is extracted as under:

“15. The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of



documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.”
(emphasis added)

38. Needless to state, burden of the plaintiff to overcome such legal presumptions are onerous, and will be the subject matter of trial. However, to approach this Court, sidestepping the issue of possession being in the hands of defendant No.2 (the beneficiary of the gift deed), cannot accrue to the benefit of plaintiff and plaintiff must, therefore, be put to terms of paying the *ad valorem* Court Fees before the suit can progress further. A mere ambiguous and vague statement in the plaint asserting joint possession cannot lean this Court's opinion in favour of plaintiff on this count.

39. Accordingly, the application allowed to the extent that the plaintiff would have to pay *ad valorem* Court Fees to continue with the suit.

40. Since, counsel for defendant pressed this application limited to the issue of Court Fees, it is, therefore, directed that the said suit will stand rejected unless the *ad valorem* Court Fees, as per Section 7(iv)(b) of the Court Fees Act, 1870, is deposited by plaintiff within a period of four weeks from the date of this judgment.

41. Needless to state that the aforesaid observations are *prima facie* in nature and have been made for adjudicating the claims raised in these applications and shall not influence the determination of the pleas of the parties at the stage of final disposal.



2025:DHC:1396



CS(OS) 298/2023

1. List before the Joint Registrar (Judicial) on 27th March 2025.
2. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

FEBRUARY 27, 2025/MK/tk