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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(OS) 653/2023 & I.As.38414-16/2024**

DR. SAROJ BAHL
W/O SHRI V. M. BAHL,
R/O 54, GLEN LOCH, SUGAR LAND
HOUSTON TEXAS,

ALSO AT
A-9, NIRMAL VIHAR
NEW DELHI.
THROUGH HER POWER OF ATTORNEY
DR. S. K. BAHL

....PLAINTIFF

(Through: Mr. Gurpreet Singh with Mr. Bhavneet Singh, Advocates.)

Versus

SMT. SUSHMA BATRA
W/O DR. V. K. BATRA

V. K. BATRA
S/O NOT KNOWN

BOTH RESIDENTS OF
C-3, MAURICE NAGAR UNIVERSITY FLATS,
DELHI.

SMT. SHASHI KUMAR
W/O SHRI LALIT KUMAR
R/O 18, ALEXANDER MACKIE CIRCUIT



2025:DHC:11302



ISSACS, ACT 2607, CANBERRA
AUSTRALIA.

SIDDHARTH MEHRA
S/O SH. CHAMAN KUMAR MEHRA

VRITI MEHRA
D/O SH. CHAMAN KUMAR MEHRA

BOTH RESIDENTS OF
K-1/41, MODEL TOWN
DELHI-110009

....DEFENDANTS

(Through: Ms. Geeta Luthra, Sr. Advocate with Mr. Anit K. Maurya and Mr. Anuj Singh, Advocates for D1 & D2.

Mr. Shashi Kumar with Mr. Anshul Gupta, Advocates for D3.

Mr. Preet Pal Singh with Ms. Tanupreet Kaur, Advocates for D4 and D5.)

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Reserved on: 09.12.2025

Pronounced on: 12.12.2025

JUDGMENT

I.A.38413/2024 (By Defendant No. 2 – under Order VII Rule 11 of the CPC)

1. The present application has been filed by the defendant no. 2 under Order VII Rule 11 of the Civil Procedure Code, 1908 ('CPC') seeking the rejection of the plaint.

2. Parties have been heard at length. The record of the case has been perused and the judgements relied upon by them have been scrutinised.



3. Upon a careful consideration of the case, the Court has come to the conclusion that the present application deserves to be rejected. The grounds raised by the applicant/defendant no. 2 and the reasons for their rejection are detailed as under.

4. *First*, the applicant/defendant no. 2 contends that the instant suit is barred by the *proviso* to S. 34 of the Specific Relief Act, 1963 (hereinafter “SRA”) as the plaintiff has not sought the relief of possession. In support of this proposition, the learned senior counsel relies upon a judgement of the Supreme Court in ***TV Ramakrishna Reddy v. M. Mallappa and Anr.***¹

5. S. 34 of the SRA reads as under:

“34. Discretion of court as to declaration of status or right.—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.”

(Emphasis supplied)

6. The legislative purpose of the said *proviso* to S. 34 of the SRA has been noted by the Supreme Court in the decision of ***Venkataraja and Ors. v. Vidyane Doureradjaperumal and Ors.***,² wherein the Court had held that the *proviso* requires a claimant to seek further relief so as to prevent multiplicity of proceedings. The underlying rationale being that a simpliciter declaratory relief in most cases is non-executable.

¹ (2021) 13 SCC 135.

² (2014) 14 SCC 502.



7. In *Akkamma and Ors. v. Vemavathi and Ors.*³ the Supreme Court has further held that if in case a consequent/further relief is sought in the plaint, the bar of the *proviso*, without more, simply does not apply. It has been clarified in the said pronouncement that the bar is intended to apply only for cases where a simpliciter declaration has been sought.

8. However, a bare perusal of the plaint would reveal that the applicant/defendant no. 2 has sought the relief of a permanent and mandatory injunction as a consequent relief. The relief clause is reproduced as under:

(a) A decree of declaration whereby declaring the Release Deed dated 23.10.1982 and the alleged General Power of Attorney as stated in aforesaid Release Deed; and Will dated 16.4.2014 and Will dated 3.2.1977, in respect of property bearing No. K-1/41, Model Town, Delhi, to be null and void and be not binding on the plaintiff.

(b) A decree of permanent and mandatory injunction restraining the defendants from creating third party interest in the suit property No. K-1/41, Model Town, Delhi, and also restrain them from mis-using those documents in any manner.

(c) An order for costs in the present suit.

(d) Any further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case.

9. Thus, by a straight application of the pronouncement of the Supreme Court in *Akamma* the argument pertaining to the bar of the *proviso* to S. 34 being attracted deserves to be rejected. Furthermore, the plaintiff has also pleaded herself to be in joint possession of the suit property, the material portion of the plaint reads as under:

³ (2021) 18 SCC 371.



“25. That the plaintiff is the co-owner of the suit property, her articles are lying in the suit property, as such she is also in joint possession of the suit property along with defendants No. 1 to 3 and her deceased sister’s (Reshma) legal heirs i.e. Defendants No. 4 and 5.”

(Emphasis supplied)

10. *Second*, the applicant/defendant no. 2 has contended that the suit is not maintainable owing to the plaintiff not having sought cancellation of the Release Deed dated 23.10.1982 to which she is a party, and further not having paid the requisite *ad valorem* court fees for the said relief.

11. A perusal of the plaint reveals that the case of the plaintiff is that the release deed dated 23.10.1982 does not bear the signature of the plaintiff, and the signature if any, is forged; and that she is in fact, not privy to the said deed, she has pleaded as such in various paras. of the plaint, some of which is reproduced as under:

“2. ...That Plaintiff inspected the court file and shocked to learn that the defendants No. 1 and 2 have created a false and fabricated Release Deed alleged to be executed by the Plaintiff in favour of her deceased mother wherein it was alleged that the Plaintiff had released all her share in favour of her late mother. It is pertinent to state here that the Plaintiff never executed any document more so Release Deed dated 23.10.1982 in favour of her late mother. The said Release Deed, if any, is a forged and fabricated document, as such Defendants No. 1 and 2 have committed perjury by filing a forged and fabricated document before this Hon’ble Court in order to obtain favourable order and to illegally grab the share of the Plaintiff and for which the plaintiff has already filed a criminal complaint before the M.M. Rohini Courts, Delhi. That the plaintiff has share in undivided property of her late father including the property of Model Town...

3. ... That the present suit is being filed by the plaintiff for the reason that the plaintiff has come to know in the year 2014 that in suit bearing CS (OS) No.1099 of 2013 filed by Chaman Kumar Mehra the plaintiff was also a party and the plaintiff has come to know that in the said proceedings a Release Deed dated 23.10.1982 was filed by deceased mother who had got the rights/ share of the plaintiff through the said Release Deed. The said Released Deed is a forged and fabricated documents and the defendant no.1 to 3 induced the deceased mother to



eat the share of the plaintiff. The said deceased mother was a senior citizen and her mental faculty was incapacitated. She was admitted in the hospital for treatment as she was in very serious condition.”

(Emphasis supplied)

12. It is settled law that cancellation is to be sought only by executors of documents and not by parties who are not privy to such deeds/agreements. In the instant case, the plaintiff has specifically pleaded that her signatures on the said release deed are forged and in actuality, she is not a party to the said deed. This being the case, a declaratory relief, as prayed for by the plaintiff, is the appropriate legal remedy to seek. The said position of law has been taken note of by the Supreme Court in ***Suhrid Singh v. Randhir Singh and Ors.***⁴, para. 6 of which reads as under:

“6. 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 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. 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

⁴ 2010 INSC 180.



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.”

The Court fees so paid by the plaintiff, in consonance with the declaratory relief sought, is also found to be appropriate.

13. The *third* ground of the defendant no. 2/applicant pertains to the application of Section 41J of the SRA which provides that no injunction can be granted when the plaintiff has no personal interest in the matter. Section 41J of the SRA, cannot straightway be made applicable at this stage without allowing parties to lead evidence. This is so because the plaintiff has clearly stated in the plaint at, *inter alia*, paras. 2, 24 and 25 that she is a co-owner of the property subject matter of the instant suit. A determination of whether that is in fact true is a triable issue.

14. *Fourth*, the applicant/defendant no. 2 has claimed that the plaint is barred by limitation. The plaintiff has pleaded his date of knowledge to be in the years 2014/2015 and the suit was filed on 10.10.2023. Whether the date of knowledge so claimed is true or not is again a triable question which needs to be answered after the parties have led evidence on the same. Limitation being a mixed question of law and fact, is, in the instant case, better left adjudicated during the course of the trial.

15. It may also be noted that learned senior counsel had layed great stress on para. 13 of the written statement filed by defendant no. 2 in CS (OS) No. 1099 of 2013. Any reliance on the same would fall ill of the trite principle that an application under Order 7 Rule 11 of the CPC is to be carefully



adjudicated by taking into account the entire case of the plaintiff. This is particularly because of the serious consequence which follows if such an application is allowed, it being, the very rejection of the plaintiff.

16. In any case, nothing really turns on the averments made in para. 13 of the said written statement. It contains nothing that would warrant the rejection of the plaintiff.

17. The last ground raised by the applicant/defendant no. 2 pertains to the non-joinder of one Mr. Chaman Kumar Mehra. By perusing the plaint and the prayer clause, it may be seen that parties necessary to get the reliefs prayed for have been arrayed by the plaintiff. The non-joinder of Mr. Mehta does not appear to be an inherent defect, particularly when no relief is sought against him. In any case, this issue as well, can be examined during the course of trial.

18. The instant application is, therefore, found to be bereft of merit and is accordingly dismissed.

CS(OS) 653/2023 & I.As.38414-16/2024

List the present matter before this Court on 24.02.2026 along with C.S. (OS) 1099/2013 and C.S. (OS) 1035/2024.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 12, 2025
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