

(2025) 12 DEL CK 0002

Delhi HC

Case No: FAO No. 400 Of 2024 &amp; Civil Miscellaneous Application No.75311 Of 2024

Naeem Ahmed

APPELLANT

Vs

Sheeba Mehfooz

RESPONDENT

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**Date of Decision:** Dec. 4, 2025**Acts Referred:**

- Code of Civil Procedure, 1908- Order 7 Rule 11(a), Order 7 Rule 11(d), Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1

**Hon'ble Judges:** Chandrasekharan Sudha, J**Bench:** Single Bench**Advocate:** Baban Kr. Sharma, Gaurav, Mumtaj**Final Decision:** Dismissed

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**Judgement**

Chandrasekharan Sudha, J

1. The present appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (the CPC), has been filed by the appellant/plaintiff challenging the order dated 19.10.2024 in CS No. 3294/2024 on the file of learned District Judge-07, South-East District, Saket Courts, Delhi, whereby his application filed under Order XXIX Rule 1 and 2 CPC has been dismissed. The parties in this appeal shall be referred to as described in the original proceedings.

2. Brief facts as alleged by the plaintiff are as follows:

The husband of the defendant is a close friend of the plaintiff, to whom he had lent some money. However, the defendant's husband later on refused to return the money. Thereafter, the defendant and her husband convinced the plaintiff that he would get good returns if he invested money in Saudi Arabia where the defendant was working. Promising the plaintiff so, the defendant and her husband convinced the plaintiff to execute a gift deed in favour of the defendant. Believing the words of the defendant and her husband, the plaintiff executed a registered gift deed dated 04.02.2015 in respect of 2050 sq. yards of land out of a total of 2750 sq. yards in Khasra No. 940/534 Min, Village Madanpur Khadar, Tehsil Kalkaji, New Delhi, in favour of the defendant and 700 sq. yds in favour of his wife. Mutation was duly carried out. However, possession was never given and hence the gift did not come into effect. So, the plaintiff filed CS No. 920/2023 seeking a declaration that the gift deed is void. However, the plaint was rejected under Order VII Rule 11(a) and (d) CPC by order dated on 24.02.2024 as being barred by limitation and without a cause of action. Appeal bearing No. RFA 341/2024 against the said order of rejection, is pending consideration before this Court.

2.1. Thereafter, the plaintiff instituted the present suit for possession and permanent injunction, alleging that on 27.03.2024, the defendant had begun unauthorized and illegal constructions in the suit property and was further attempting to alienate it to third parties. The plaintiff also moved an application under Order 39 Rules 1 and 2 CPC, stating that the defendant had encroached upon 1599 sq. yards of property by dumping bricks, sand and other materials with the intention of raising constructions and hence, sought an interim order of injunction.

2.2 The defendant, on the other hand, submitted that the suit was not maintainable in view of the earlier order of rejection of the plaint in the earlier suit filed for declaring the gift deed void. It was contended that the plaintiff was taking inconsistent stands in the various suits between the parties. It was further contended that after the execution of the gift deed, it was accepted and possession of the property was taken by the defendant and so the plaintiff ceased to have any right in the property. Further, if at all the plaintiff required any relief, he ought to have moved the court in which RFA 341/2024 is pending.

2.3. After hearing both sides, the trial court dismissed the application under Order 39 Rule 1 and 2 holding that the plaintiff had no prima facie case and no urgency, irreparable loss or ground for interim injunction was made out. Aggrieved, the plaintiff has come up in appeal.

3. The learned counsel for the plaintiff submitted that till the lis is pending the subject matter of the suit required to be preserved and hence the trial court went wrong in dismissing his application. It was also submitted that if constructions etc. are carried out in the property, it would adversely affect the interest of the plaintiff in the suit property and hence it is absolutely necessary to pass an order of status quo and directing the defendant not to make any constructions or create any third party interest in the property.

3.1 On the other hand, it was submitted by learned counsel for the defendant that the impugned order suffers from no infirmity calling for an interference by this Court.

4. Heard learned counsel for the appellant/plaintiff as well as the respondent/defendant and perused the materials on record.

5. The plaintiff claims to be the absolute owner of the plaint schedule property. However, he admits that as early as in the year 2015 he had executed a gift deed in favour of the defendant. He also admits that mutation was also effected. In the year 2023, the plaintiff filed CS 920/2023 for declaring the gift deed to be void on the ground that possession of the property had never been handed over to the defendant and so the gift has never come into force. The suit apparently was filed nearly eight years after the execution of the gift deed. The trial court by Annexure P3 order dated 24.02.2024 has rejected the plaint in the suit on the ground of limitation and as the plaint did not reveal any cause of action. These facts are admitted by the plaintiff. It is also admitted that Annexure A3 order is under challenge in RFA 341/2024. It is while so, the present suit has been filed alleging that that plaintiff is the owner of the plaint schedule property; that the gift deed is void and that the defendant has encroached into the property and is making constructions in the property. In the light of Annexure P3 order, the plaintiff cannot succeed unless and until the said order is set aside. Moreover, it is admitted by the plaintiff that the plaint schedule property in CS 920/2023 and in the present suit are one and the same. Therefore, if during the pendency of the RFA, if any constructions were attempted to be made in the property, the plaintiff ought to have moved necessary application in the said appeal and not file a fresh suit relating to the same property pending consideration before the appellate court.

6. In the aforesaid circumstances, I find no infirmity in the impugned order calling for interference by this court.

7. The appeal sans merit is dismissed. Application(s), if any pending shall stand closed.