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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17.01.2017

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Decided on : 23.05.2017

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C.S.(OS) 1161/2015, Crl.M.A.18029/2015 & I.A.8777/2015

RAKESH GUPTA & ANR.

..... Plaintiffs

Through: Mr.Sanjay Goswami, Advocate

versus

SUSHIL KUMAR GUPTA & ORS.

..... Defendants

Through: Mr.Deepak Chopra, Adv. for D-1 and
D-2.

Ms.Manpreet Gill, Adv. for D-4.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

**I.A.12175/2016 (on behalf of defendant no.1 under Order VII
Rule 11 (d) CPC)**

1. The defendant no.1 vide this application has sought the dismissal of the suit on the ground that the plaintiffs have no cause of action in their favour. It is submitted that suit is based on a Will dated 31.05.2010 and its Codicil dated 23.03.2011 executed by defendant no.4 and she is still alive. No suit can be filed since the Will is enforceable only on the demise of testator, and testator is still alive.

2. In their reply, the plaintiffs have submitted that although the document is titled as Will (dated 31.05.2010) and Codicil (dated 23.03.2011) but in fact these documents are settlement documents and pursuant to this the plaintiffs are in settled possession of the different portions of the property No.4, Defence Colony Market, New Delhi. While the plaintiff no.1 is in settled possession of the entire first floor, second floor portions, the plaintiff no.2 is in the settled possession of 50% of the ground floor of Shop No.4, Defence Colony Market in the capacity of partner of M/s New Evergreen Store. It is submitted that the plaintiffs have sought a decree of permanent injunction against their illegal dispossession as they apprehend illegal dispossession by defendants and since they are in settled possession they have cause of action in their favour. It is submitted that the application is liable to be dismissed.

3. I have heard the arguments and have perused the relevant record.

4. The plaintiffs have filed the present suit against defendant no.1, their brother and defendant no.2, brother's wife and also their mother. They have also made Sub-Registrar as a party to the suit. The suit relates to the declaration and permanent injunction. The case of the plaintiffs is that Mrs.Angoori Devi Gupta (defendant no.4), their mother is presently residing

at A-305, First Floor, Defence Colony, New Delhi. Defendant No.1 (Sushil K. Gupta) is brother of plaintiffs. Defendant No.2, Anjali Gupta is wife of defendant No.1. Anjali Gupta is made a party because defendant no.1 fraudulently persuaded defendant No.4 to execute certain documents in her favour. It is submitted that their mother defendant no.4 is suffering with multiple diseases and she cannot even identify her close relatives including her only daughter Renu Gupta. She had remained admitted during the period 23.02.2015 to 04.03.2015 in intensive care in Moolchand Hospital and although discharged but under prescription takes strong sedative medicines. She is the absolute owner of the immovable and movable property including property bearing shop no.4, Defence Colony Market and Shop No.19, LSC, Naraina and share in house no.2/43, Sarvapriya Vihar, New Delhi as well as other movable properties. It is submitted that for many years immovable properties were used and maintained with the consent of defendant no.4 and defendant no.1. Plaintiff No.2 Mukesh Kumar Gupta is occupying the ground floor of property bearing shop no.4, Defence Colony and the plaintiff No.1 has been in exclusive occupation of the first and second floor of the said property and using it as his residence-cum-office for his company M/s Simsona Technology Private Limited. They are maintaining the portions of

the said properties in their possession. It is submitted that the plaintiff no.2 is running his business in the name of M/s New Evergreen in partnership with defendant no.1 in the said property and had spent lakhs of rupees in the development of the property and its maintenance and also paying property tax etc. of the portions which are in their use and occupation. The plaintiff no.1 is presently in possession of the entire ground floor of the property no.2/43, Sarvapriya Vihar, New Delhi which is presently lying vacant and he is paying all the dues of the said property including property tax, electricity and water charges. The defendant no.4 has even issued a No Objection Certificate in favour of plaintiff no.1 permitting him to get his company registered at the address of the first and second floor of shop no.4, Defence Colony and therefore they are in settled possession of the entire first floor and second floor of property no.4, Defence Colony. It is submitted that Mrs. Angoori Devi with the consent and consensus of all four sons and her daughter Smt. Renu Gupta and Rajesh Gupta, husband of Smt. Renu Gupta executed a registered settlement in the form of a Will dated 31.05.2010. It is submitted that subsequent to this defendant no.4 executed a registered Codicil dated 23.03.2011 clarifying her Will dated 31.05.2010 which actually was a family settlement. It is further contended that

defendant no.1 wanted to usurp the property in possession of plaintiffs and also threatened to get the whole of the property transferred in his name from defendant no.4 Angoori Devi and that is why their relationship with defendant No.1 turned sour. Angoori Devi due to her old age and illness, not able to comprehend and understand things. It is contended that plaintiff no.1 came to know that defendant no.1 and 2 fraudulently got executed a registered gift deed of shop no.4, Defence Colony on 21.04.2015. Plaintiffs lodged a complaint with the Sub-Registrar immediately on 22.04.2015 against the registration of the gift deed and also lodged complaint with various other authorities. In para 33 of the plaint, the petitioners have stated that the cause of action has arisen in their favour on 17.03.2015 when defendant no.1 tried to forcibly dispossess the plaintiff no.1 from the first and second floor of Defence Colony property and on 21.04.2015 when defendant no.1 and 2 got the gift deed executed in their favour from defendant no.4. On these facts, the plaintiffs have prayed for a decree of declaration that an irrevocable license is created in their favour as regards the ground, first and second floor of property no.4, defence colony under the settlement made in Will dated 31.05.2010 and Codicil dated 23.03.2011 and they should be declared the absolute owner in possession of the same and

have also sought declaration of the nature that any document executed in the nature of title deed, sale deed, gift deed, any blank signed pages or any other documents got executed by defendant no.1 from defendant no.4 Angoori Devi as regards property no.4, Defence Colony on 21.04.2015 are null and void and also sought a decree of permanent injunction restraining defendant no.1 from interfering in their possession in the said property.

5. Learned counsel for the plaintiff has argued that since the Will dated 31.05.2010 and Codicil dated 23.3.2011 have been acted upon and they have been given the possession under the said documents, it is in fact a family settlement creating ownership rights in the property in their possession and a declaration to this effect be given and their possession should be protected by way of permanent injunction and any document which affects their right to continue in the said property be declared as null and void, especially, the document dated 21.04.2015. It is argued by learned counsel for the plaintiff that although the document dated 31.05.2010 and its Codicil has been titled as Will and Codicil respectively but in fact that is a family settlement creating rights in favour of the parties and also transferring the possession in the property. It is submitted that the expression used in the Will to the effect *“my sons can get the aforesaid properties mutated in the records in their*

favour on the basis of this Will or its certified true copy” clearly shows that the intention of respondent no.4 was to create rights in the property in possession of the beneficiaries under the said document that is why the rights to get the respective portions of the properties mutated was given to the beneficiaries. It is submitted that since the rights created were in praesenti, the document is a family settlement and not a Will. Reliance is also placed on *Namburi Basava Subrahmanyam vs. Alapati Hymavathi and Others* (1996) 9 SCC 388 and *P.K.Mohan Ram vs. B.N. Ananthachary and Others* (2010) 4 SCC 161. It is argued that the court has propounded that the nomenclature of the document is not conclusive but it is the intention of the executants inferred from the language of the document and the acknowledgement thereof by the parties which determines the real character of the document. It is submitted that the facts in *Namburi Basava Subrahmanyam* (*supra*) that case are similar to this case. In that case, Seshamma bequeathed her properties to her two daughters by two settlement deeds executed and registered on 01.12.1958. Her husband died on 04.05.1970. On 21.08.1970 Seshamma revoked the settlement deed and executed a Will giving the properties gifted in favour of one daughter. After her death, the daughter filed the case and the trial court held that since there

was an earlier settlement deed, the Will was not valid in law and dismissed the suit. The contention of other party was that the settlement deed, though titled as a 'settlement deed' but in fact was a 'Will' as the executants of document had reserved for herself the life interest in the property and put a rider that the daughter could not alienate it during her lifetime. The Supreme Court after relying on the language of the settlement deed had held that the recitals of the settlement deed executed since had created rights thereunder which were intended to have taken effect from that date to the extent the land mentioned in the schedule on the settlement deed along with the boundaries, and since the document had created right, title and interest in the said properties, the rider that the daughter was to acquire absolute enjoyment alienation etc. only on her demise and the fact that the executant had created for herself a life interest in the property, were of no consequent since rights and interests in the property were created in praesenti, the document was a settlement deed and not a 'Will'. It is argued that it is clear from the language of the impugned document that it creates rights in favour of the plaintiffs in praesenti and only because defendant no.4 had retained the ownership rights of the properties does not make it a Will but it is a settlement deed creating rights in praesenti.

6. The learned counsel for the defendants on the other hand has argued that the plaintiffs have no property in their possession and will dated 31.05.2010 is not a family settlement. It is only a Will and the executants can change it or repeal it any time and the executant of the document is still alive. Since indisputably, defendant no.4 is the absolute owner of the suit property and she is alive and she is within her rights to deal with the property in any manner she wants. The plaintiffs were only permitted to enjoy the property of defendant no.4 being her sons. They do not have any vested right or interest in the suit property of defendant no.4. They thus have no cause of action to file the present suit against the owner of the suit property. They have no cause of action in their favour as admittedly they do not have any right, title or interest in the suit property, which needs protection.

7. It is further submitted that the plaintiffs have concealed material facts from the knowledge of this court and thus guilty of suppression of material facts and can be non-suited on these grounds. Reliance is placed on *Oswal Fats and Oils Ltd. vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others* (2010) 4 SCC 728, *S.P.Chengalvarya Naidu (dead) By L.Rs. vs. Jagannath (dead) by L.Rs. and Others* AIR 1994 SC

853, *Ram Chander Aggarwal vs. UOI & Ors.* 2012 (128) DRJ 271 (DB),
Surya Prakash Tyagi vs. Ltd. Governor of Delhi & Ors. (2009) 160 DLT 42
(DB), **Sandeep Kumar vs. Nihal Chand** 2014 (207) DLT 104 and
J.Kumaradasan Nair & Anr. vs. IRIC Sohan & Ors. (2009) 12 SCC 175.

It is submitted that the plaintiffs have not disclosed that the plaintiff no.2 and defendant no.1 had executed a Rent Deed with defendant no.4 Angoori Devi on 02.04.2015. They have also concealed that fact that the registered partnership deed executed between plaintiff no.2 and defendant no.1, they had admitted that they will be paying monthly rent to defendant no.4 i.e. the Angoori Devi. And they have also concealed the fact that Angoori Devi had executed a Retirement Partnership Deed on 01.04.2015 in which maximum share of defendant no.4 were devolved to plaintiff no.2 and lesser share on defendant no.1. It is further argued that finding in *P.K. Mohan case* (supra), the case law relied upon by the plaintiffs is not applicable on the facts of the present case because in the present case the testator is still alive. It is submitted that the Supreme Court has clearly held in *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd.* 2003 (2) SCC 111 that a judgment has a precedent value only as the similarity of facts and since in the present case, the testator is still alive, the case law relied upon by the plaintiff relating to

the interpretation of the document is not applicable. It is further argued that it is a well settled proposition of law that a document has to be read as a whole. Reliance is placed on the findings of the Supreme Court in *S.Chattanatha Kurayalar vs. Central Bank of India Ltd. & Others* AIR 1965 SC 1856 and the decision of this court in *Ansaldo Caldaie Boilers India Pvt. Ltd. vs. Union of India & Anr.* 177 (2011) DLT 752 (DB). It is also submitted that since the plaintiff has concealed the material facts from this court, plaintiffs are guilty of contempt of court and relied on the facts of *Satish Khosla vs. Eli Lilly Ranbaxy Ltd.* 1998 (1) AD (Delhi). It is argued that not only the plaintiffs have no cause of action but they are also guilty of suppression of material facts.

8. I have heard the arguments and given thoughtful consideration to the rival contentions.

9. The main contention of the defendants is that the plaintiffs have no cause of action and therefore, the suit is liable to be dismissed. The present suit has been filed for declaration and permanent injunction in respect of the suit property. Their main contention is that the documents titled as Will and the document titled as Codicil are in fact documents showing settlement between the parties pursuant to which the defendant no.4 has created right,

title and interest in her properties in favour of the plaintiffs and others in the praesenti. The plaintiffs have averred that defendant no.4 after executing these documents cannot subsequently gift away the properties by executing a Gift Deed. Their case is that the properties given to them and others under these documents vest in the plaintiffs and others and they are already in occupation of the respective portion of the properties assigned to them. Under these documents, their rights created cannot be gifted away by defendant No. 4 by executing any subsequent document. While the plaintiffs stand is that it is a family arrangement/settlement, the defendants have stated in their application under Order VII Rule 11 of CPC that it is a will and the executants of the Will is alive and she being the owner of the property can at any stage cancel the said Will and Codicil and execute any other document and so plaintiffs have no cause of action..

10. The cause of action is bundle of essential facts disclosed by the plaintiff in the plaint in order to establish his rights in the claim for which he has come before the court. These are the facts and not the evidences which constitutes the cause of action. The averments made in the plaint have to be read in its entirety. The court is also not required to dissect the pleadings into several parts and then consider whether each one of them discloses a

cause of action. It is the meaningful reading of the plaint which the courts must do in order to ascertain if there exists any cause of action in favour of the plaintiff. The courts are also not required to reject a plaint on the basis of allegations made by the defendants in the written statement or in the application for rejection of the plaint if the plaint discloses some cause of action which requires determination by the court. For deciding an application under Order VII Rule 11 CPC, the averments made in the plaint have to be considered to be true and then to find out whether those averments disclose a cause of action or a triable issue as such.

11. There is no dispute to the settled proposition that while dealing with application under Order VII Rule 11 CPC, the court can, besides the averments in the plaint also consider the documents relied upon by the plaintiffs. The plaintiffs claim rests on two documents, titled as Will dated 31.05.2010 and Codicil dated 23.03.2011. While the plaintiffs' claim is that it is a settlement deed, contention of the defendants is that this document is a Will and the testator is still alive and she being the owner of the property mentioned in the Will and Codicil has a legal right to terminate the Will at any stage. The only issue is whether the document dated 31.05.2010 and its Codicil dated 23.03.2011 is a Will or a settlement. For the answer to this

question, at this stage, the Court has to rely only on the averments in the plaint and judge the documents in the light of the averments in the plaint. Any defence sets out by the defendant is of no consequence. It is a settled proposition of law that a document is to be read as a whole (reliance is placed on *S.P.Chengalvarya Naidu (supra) & Ansaldo Caldaie Boilers India Pvt. Ltd. (supra)*)

12. The principles governing the interpretation of a document to judge whether the document is testamentary or a settlement, has been set out by the Supreme Court in the case of *P.K.Mohan Ram (supra)*. In that case, the Supreme Court has relied on its earlier judgment in case of *Namburi Basava Subrahmanyam vs. Alapati Hymavathi and Others (1996) 9 SCC 388* and many other judgments. In *Namburi Basava Subrahmanyam vs. Alapati Hymavathi and Others (1996) 9 SCC 388*, the Apex court has held as under:

“5. The said recital clearly would indicate that the settlement deed executed on that date is to take effect on that day. She created rights there under intended to take effect from that date, the extent of the lands mentioned in the schedule with the boundaries mentioned there under. A combined reading of the recitals in the document and also the schedule would clearly indicate that on the date when the document was executed she had created right, title and interest in the property in favour of her second daughter but only on her demise she was to acquire absolute right to enjoyment, alienation, etc. In other words, she had created in herself a life interest in the property and vested the

remainder in favour of her second daughter. It is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the property would devolve on the settlee with absolute rights on the settlor's demise. A reading of the documents together with the schedule would give an indication that she had created right and interest in praesenti in favour of her daughter Vimalavathy in respect of the properties mentioned in the schedule with a life estate for her enjoyment during her lifetime. Thus, it could be construed rightly as a settlement deed but not as a will. Having divested herself of the right and title thereunder, she had, thereafter, no right to bequeath the same property in favour of her daughter Hymavathy. The trial court and the learned Single Judge rightly negated the claim. The Division Bench was not, therefore, correct in law in interfering with the decree of the trial court.”

13. After relying on these principles the Supreme Court in **P.K.Mohan Ram** (*supra*) has held as under:

“29. A careful reading of Ext. A-2 shows that in the title itself the document has been described as a settlement deed. By executing that document, Shri K. Perumal Iyer expressed his intention, in no uncertain terms, to settle the property in favour of 16 persons who were none else than his own relatives and declared that “from this day onwards I and you shall enjoy the land and house without creating any encumbrance or making any alienation whatsoever”. This was an unequivocal creation of right in favour of sixteen persons in praesenti. Though, the beneficiaries were to become absolute owners of their respective shares after the death of the settlor, the language of the document clearly shows that all of them were to enjoy the property along with the settlor during his lifetime and after his death, each of the beneficiaries was to get a specified share. In the concluding portion, the settlor made it clear that he will have no right

to cancel the settlement deed for any reason whatsoever or to alter the terms thereof.”

14. Therefore, the intention of the executant of the Will on which the plaintiff is relying has to be ascertained from the recitals made in the document, in its totality and thereby discerning the intention of the executants and real nature of documents. Rule of construction of document is amply clear. The plain meaning has to be given to the document. The relevant documents i.e. the Will dated 31.05.2010 and Codicil dated 23.03.2011 are reproduced as under:

“WILL

“This Will is made at New Delhi on this day of May 2010, by Smt. Angoori Devi Gupta w/o Late Shri S.K. Gupta, resident of A-305, Defence Colony, New Delhi. Life is short and uncertain, god knows when it may come to an end. I therefore to avoid any litigation amongst my legal heirs is willingly and without any pressure making this Will with my own wish.

I have four sons namely 1) Shri Suresh Kumar Gupta 2) Shri Mukesh Kumar Gupta 3) Shri Rakesh Gupta and 4) Shri Sushil Kumar Gupta and a youngest daughter Smt. Renu Gupta w/o Shri Rajesh Gupta as my legal heirs.

I have spent enough on the marriage of my daughter and she being well off, I do not want to bequeath any of my immovable property to her. I am owner of the following immovable properties which I want to bequeath the same as follows :

IMMOVEABLE PROPERTIES

a) SHOP NO.4 DEFENCE COLONY MKT NEW DELHI

That the property/shop was constructed s Ground Floor, First Floor and the Second Floor which is old structure and one has to demolish the same and reconstruct a new modern building as per relaxed norms to extract the commercial value out of this property. But at present I am bequeathing the same as per old structure. That the 19 feet length on ground floor only with full width from back side will devolve to Shri Mukesh Kumar Gupta and the remaining ground floor will devolve to Shri Sushil Kumar Gupta. The entire first floor, entire second floor with its terrace rights will devolve to Shri Rakesh Gupta.

The share in undivided land beneath the structure is in the ratio of 45:38:17 for Rakesh, Sushil, Mukesh respectively. They are entitled to share the property in the above ratio. I wish that the old structure be demolished and a new commercial building be made and in that scenario the structure will be divided as follows:

BASEMENT MUKESH KUMAR GUPTA

GROUND SUSHIL KUMAR GUPTA

FIRST, SECOND, THIRD AND ABOVE : RAKESH GUPTA

That a staircase of apporx. 1/3rd in width of the plot should be made from front side for entry to the upper floors. It is clarified that a new building is not made within a period of 4 years, in that eventuality Sh. Rakesh Gupta will be entitled to have the staircase from the front side of the shop in the old structure.

b) SHOP NO. 19, LSC NARAINA, NEW DELHI

I hereby bequeath this property to my eldest son Shri Suresh Kumar Gupta and he will have full rights of ownership in the property.

c) 1/5th SHARE IN HOUSE NO.2/43 SARVAPRIYA VIHAR

I hereby bequeath my share in this property to my son Shri Rakesh Gupta and he will become owner of 40% in the property.

As long I am alive I shall remain the owner of these properties and my sons can get the aforesaid properties mutated in the records in their favour on the basis of this Will or its certified true copy.

MOVABLE PROPERTIES

30% SHARE IN NEW EVERGREEN STORE

I am partner to the extent of 30% in NEW EVERGREEN STORE. I hereby bequeath my share to Mukesh Gupta and Sushil Gupta in equal ratio and after my demise they will be partners of 50:50 each.

OTHER MOVEABLE AND RESIDUAL PROPERTIES

I bequeath my cash, ancestral jewellery and other assets to my four daughter in laws in equal portion. All my moveable assets will devolved upon them equally. My bank balance or any investment in shares or bond will devolve upon to my youngest son Shri Sushil Gupta.

In witness thereof this WILL is signed at New Delhi on this 10th day of June 2010 in the presence of the following.

TESTATOR

*SD/- ANGOORI
DEVI*

WITNESSES:

SD/-

*1. Rajesh Gupta
S/o Late Shri R.K. Gupta,
B-393, New Friends Colony,
New Delhi. PAN NO. AAAPG7884Q*

*Drafted by:
Smt. Angoori Devi
A-305, Defence Colony*

2. Sd./-

*Sushil Kumar Gupta
S/o Late Sh. S.K. Gupta
A-305, Defence Colony,
New Delhi. PAN NO. AAHPG2302A*

3. Sd/-

*Mahesh Saini
S/o Sh. H.R. Saini
4/17, D/S, Jangpura Extn.,
New Delhi.” *(emphasis mine)**

“CODICIL TO WILL

This Codicil is made at New Delhi, on his 23rd day of March 2011, by Smt. Angoori Devi Gupta w/o Late Shri S.K. Gupta, resident of A-305, Defence Colony, New Delhi.

I am in good health and sound disposing mind and voluntarily wish to make the following additions/amendments in my earlier Will dated 31st May, 2011, duly registered as document No.4300 in Addl. Book No.III, Volume No. 1834, on pages 138 to 140, on 28.06.2010, in the office of the Sub Registrar, New Delhi,

All other bequeaths made vide earlier Will dated 31st May, 2010, shall remain same.

This Codicil shall form part and parcel of my earlier Will dated 31st May, 2010 and both these documents shall always be read together.

IN WITNESS WHEREOF I have signed this Codicil on the day, month and year first above written, in the presence of the following witnesses.

SD/- Angoori Devi
TESTATOR

WITNESSES:

1. SD/-

RONIT MEHRA

S/O SH. T.S. MEHRA

R/O E-56 FATEHPUR

NEW DELHI”

(emphasis provided)

15. While disposing of the application under Order VII Rule 11 of CPC, the court is not deciding the suit of the plaintiff, but only ascertaining if they have any cause of action in their favour. The interpretation of the document, whether it is the Will or settlement, is done only with the sole intention to determine if the averments made by the plaintiff in the plaint are inconsonance with these documents.

16. The language of the document (the Will) i.e.

“.....That the property/shop was constructed s Ground Floor, First Floor and the Second Floor which is old structure and one has to demolish the same and reconstruct

a new modern building as per relaxed norms to extract the commercial value out of this property. But at present I am bequeathing the same as per old structure.....”

“..... I wish that the old structure be demolished and a new commercial building be made and in that scenario”

Clearly shows that the testator although was bequeathing the old structure wished that new structure be raised within a period of four years.

17. Thereafter the executants had stated

“.....That a staircase of approx. 1/3rd in width of the plot should be made from front side for entry to the upper floors. It is clarified that a new building is not made within a period of 4 years, in that eventuality Sh. Rakesh Gupta will be entitled to have the staircase from the front side of the shop in the old structure.”

“b) **SHOP NO. 19, LSC NARAINA, NEW DELHI** I hereby bequeath this property to my eldest son Shri Suresh Kumar Gupta and he will have full rights of ownership in the property.”

18. This averment in the document clearly shows that during her lifetime the testator had given full right of ownership of shop No.19, LSC, Naraina, New Delhi in favour of her son Suresh Kumar. Although she has stated in the document “As long I am alive I shall remain the owner of these properties..... but she further proceeds to say “my sons can get the aforesaid properties mutated in the records in their favour on the basis of this Will or its certified true copy.”

19. From these averments in the document, the intention of the executant is amply clear. She desired to settle the beneficiaries under this document in respect of the properties they will hold and that is why permitted them to get the properties mutated in their names. The rights under these documents are created in praesenti. The wish of executor to get the old structure demolished and new building be raised within four years also fortifies her intention to permit the beneficiary under the document to get the properties reconstructed. *Prima facie* from the language of the document it appears that she had created right, title and interest in the properties in favour of the beneficiaries in praesenti. This document, therefore, supports the averments and contention of the plaintiff that rights in respect of properties in their possession was created in their favour under this document. The plaintiffs have also clearly stated that they are in occupation and possession of the properties given to them under this document. In the light of the above, it cannot be said that the plaintiffs do not have a cause of action in their favour.

20. Learned counsel for the defendants has relied on number of cases in order to prove that the plaint is liable to be rejected on the ground that the facts, which they have disclosed in their application under Order VII Rule

11 CPC, have been concealed by the plaintiffs. This contention of the defendants has no merit in it. In view of the settled proposition of law while dealing with the application under Order VII Rule 11 CPC, the court has to confine itself only on the averments in the case and which have to be taken as gospel truth. The other argument that case laws of P.K. Mohan (supra), Namburi (supra) are not relevant because the testator is alive, has no merit in view of the above discussion. It is clear that the plaintiffs have cause of action in their favour. The application of the defendant No.1 has no merit and the same is hereby dismissed.

C.S.(OS) 1161/2015

List before Roster Bench on 26.05.2017.

MAY 23, 2017

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**DEEPA SHARMA
(JUDGE)**