

CS No. 144/2021

Ravinder Kaur Through its SPA Sh. Ajay Aggarwal Vs. Chanda

16.03.2021

Present: Sh. Subham Aggarwal Ld. Counsel for plaintiff.
Sh. Arvind Nagar Ld. Counsel for defendant with SPA of defendant.

Written statement along with vakalatnama filed on behalf of defendant. Copy given. Time sought to file replication. Be filed on or before next date of hearing.

Statement of SPA of defendant and Ld. Counsel for plaintiff recorded today.

Ld. counsel for plaintiff has pressed his application u/o.39 rule 1& 2 CPC dated 08.02.2021.

The brief facts of the case necessary to dispose of this application are that there is a property bearing no. XV/3622-34, Daribapan, Paharganj, New Delhi-110055. Sh. Avtar Singh i.e. husband of the plaintiff had purchased this property (hereinafter referred as to property). After the death of Sh. Avtar Singh, plaintiff became owner by virtue of Will which was duly probated in the court of Hon. District Judge. Now plaintiff is the absolute owner of the property.

She being a widow and thus could not completely monitor the property. The defendant illegally trespassed into a portion, shown red in the site plan of the property (hereinafter called suit property). He was asked to vacate the same and even a legal notice dated 05.01.2021 was issued to the defendant but without any effect. So the suit was filed seeking recovery of possession of the suit property, decree for perpetual injunction for restraining the defendant or other persons through him from creating third party interest. Other ancillary reliefs are also sought.

In the written statement filed by the defendant, it is stated that the present suit is not maintainable since the plaintiff has filed another suit against the husband of the defendant i.e. Sh. Babu Ram which was dismissed on 13.09.1984. Defendants are in unhindered, open, peaceful adverse possession of the suit property since July, 1966.

I have gone through the records, statement made by and on behalf of the parties today and submissions forwarded by Ld. Counsels for parties.

From all these it appears that prima facie defendant is in possession of the suit property. In case third party interest is created there will be multiplicity of litigations. Moreover creation of third party interest by the parties will also be of such nature which cannot be compensated by way of money.

So, in these circumstances, it is directed that neither of the parties i.e. defendant or plaintiff shall create any third party interest in the suit property shown red in the site plan till the disposal of the case.

Nothing expressed herein shall tantamount to the expression of the case on merits.

Application u/o.39 rule 1&2 CPC dated 08.02.2021 is disposed off.

Put up for filing of replication, if any, hearing on application u/o.2 rule 2 CPC and framing of issues on 04.05.2021.

**(Rakesh Pandit)
ADJ-09/Central/THC/Delhi
16.03.2021**