

CS No. 144/21

**Ravinder Kaur Through Its Spa Sh. Ajay Aggarwal Vs.
Chanda**

15.02.2022

PHYSICAL HEARING

Present: Sh. Shubham Aggarwal Ld. Counsel for plaintiff.

By this order, I will dispose of application u/sec.151 CPC dated 31.10.2021 (treated as application u/o.39 rule 4 CPC).

In this application, plaintiff has sought modification of order dated 16.03.2021.

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.

On 16.03.2021, both the parties i.e. plaintiff as well as defendant were restrained from creating any third

party interest in the suit property. Both the parties have also given statement in this regard.

In this application, it is prayed that Smt. Ravinder Kaur may be allowed to sell the property to Sh. Ajay Aggarwal as he is looking after the plaintiff in her old age. It is stated that the suit property is only a small portion of the complete property. It is stated that the property lies in the slum area.

In the reply filed by the defendant, he has denied the facts of the application.

As far as this application is concerned, the fact that Sh. Ajay Aggarwal was looking after the plaintiff was known to the plaintiff at the time of giving statement dated 16.03.2021. No grounds exists for modification of order as far as suit property is concerned. Accordingly, the application is dismissed.

From the perusal of record, it appears that replication is already filed by the plaintiff.

Put up for admission/denial of documents on
30.03.2022.

(Rakesh Pandit)
ADJ-09/Central/THC/Delhi
15.02.2022