

CS 28/17

MAYA CHAUHAN ETC Vs. KANTA DEVI ETC

08.01.2025

Present: Shri Ravi Ranjan, Ld. Counsel for plaintiff a/w plaintiff
no.1.

There is an application u/s 151 CPC seeking directions to the defendant to conduct DNA test to establish their paternity is pending for adjudication.

Order on IA u/s 151 CPC filed by plaintiff.

1. It is submitted that all evidence having been recorded, however, there are no sufficient documents on record establishing the paternity of the defendants. It is further submitted that defendants claim to be the legal heirs of late Mr. Tek Chand, yet the respondents have failed to submit any relevant evidence or documents to substantiate their claim. It is further submitted that respondent has also claimed the property of late Mr. Tek Chand on behalf of false and fabricated Will, despite knowing that the said property is ancestral property. Whereas, without admitting the contents of Will, it is submitted before the hon'ble Court that the tempering and over writing in the said will could be clearly seen. It is further submitted that plaintiff will suffer irreparable losses if the present application is not granted. No prejudice would be caused to the defendants if the present application is allowed. It is therefore requested that present application be allowed.

2. Reply to the said application on behalf of defendants has been filed. It is submitted that application filed by the plaintiff is not

maintainable in law and facts of this case, in as much as, under the garb of the present application the plaintiff is trying to arrest the proceedings of the case which was listed for final arguments, as such, the application filed by plaintiff is liable to be dismissed. It is further submitted that application filed by the plaintiff is not maintainable in law, as no issue with regard to the paternity of the defendant no.2 to 4 has been framed while framing the issues on 16.10.2018, nor the issue has been pressed by the counsel for the plaintiff while framing the issues, being so, if the application would be allowed by hon'ble court, though strongly objecting by the defendants, in that eventuality, no purpose would be served as no issue has been framed with regard to the paternity of the defendant no.2 to 4. It is further submitted that plaintiff has to stand on her legs to prove her case and cannot be allowed to use machinery of the court to bring positive evidence in her favour especially the evidence in the shape of scientific investigation. It is further submitted that DNA test affect the right to privacy and personal liberty of the party in as much as the presumption raised under Section 112 of Indian Evidence Act can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities and there is no provision in the CPC where under the DNA test may be ordered. Defendants has further denied all the other allegations of the plaintiff alleged in the application and prayed for dismissal of the application.

3. Heard. Record perused and considered.

4. By way of present suit, the plaintiffs are seeking recovery of possession of suit property bearing no. 32, situated at village Samaspur, PO Patparganj, Delhi. The plaintiffs are further seeking decree of

declaration thereby declaring the marriage certificate dt. 20.05.1988, agreement/receipts dt. 12-13 January, 1988 and the registered Will dt. 24.06.1996 as null and void. Besides, the plaintiffs are also praying for rendition of accounts, damages and permanent injunction in their favour and against the defendants. The case of plaintiffs is based on averments that the suit property (including the abovesaid property bearing no. 32, situated at Village Samaspur PO Patgarganj Delhi and 25 tolas of gold and 1.5 kg silver and cash) is belonged to their grandfather who died intestate in the year 1975, left behind the plaintiffs and their father Sh. Tek Chand. Sh. Tek Chand/father of plaintiff, under the influence of defendant no.1 refused to return their respective share in the suit properties. Subsequently, plaintiff and her sisters filed a suit for partition and rendition of account bearing CS 2380/16 in the year 1995 against the other LRs of Sh. Bharat Singh (grandfather of plaintiffs). On 20.10.2016, the plaintiff no.1 withdrew the said suit with liberty to file afresh. It is further the case of plaintiffs that the defendant no.1 was permitted to use two rooms, bathroom and kitchen on the first floor of the suit property as a licensee when she came from her village for doing the domestic work of deceased parents of plaintiffs. After birth of defendant no.2 to 4 they were also obliged to live in the suit property. After the death of parents of plaintiffs, the defendants came into the possession of the suit property and started receiving rent from the tenants in occupation of the suit property. The father of plaintiffs had received a huge amount of rent and sale consideration of agricultural land and was also in possession of cash and other liquidating assets which were left by deceased mother of plaintiffs. The father of plaintiffs deposited the said amount in fixed

deposits and saving accounts in his name and in the name of defendants however, the defendants have no right in the said deposits. The defendants are liable to account the amount of rent received from the tenants as well as to handover the possession of suit property which is in their unauthorised possession.

5. The defendants have based their defence on a registered Will dt. 24.06.1996 allegedly executed by Sh. Tek Chand. It is further the averments made by the defendants in their written statement that the said property was self acquired property of Sh. Tek Chand hence the defendants are not liable to vacate the suit property.

6. This Court is of the opinion that the arguments advanced by the Ld. Counsel for defendant are borne out from the record for the reasons mentioned below:

- i. The suit of plaintiff is for seeking possession of the suit property stating that the suit property was the self acquired property of their grandfather (Sh. Bharat Singh). Hence it is incumbent upon the plaintiff to prove the ownership of their grandfather to the suit property.
- ii. The defence of defendant is based upon a Will executed by Sh. Tek Chand and upon the averments that the suit property was self acquired property of Sh. Tek Chand. Hence, the first thing which is required to be proved by the defendants to establish their defence is that the suit property is the self acquired property of Sh. Tek Chand. Secondly, they are required to prove the Will dt. 24.06.1996.

iii. There is no issue has been framed with regard to the paternity of defendant no.2 to 4 while framing issues on 16.10.2018. Ld. Counsel for plaintiff, while framing issues, has not pressed the issue regarding the paternity of defendant no.2 to 4.

iv. It is relevant to note that the plaintiff has not made any prayer to challenge the paternity of defendant no.2 to 4 in her plaint.

v. No purpose would be served if the present application is allowed as the present suit is not for partition wherein the paternity of parties might have been a material factor for proper adjudication of suit. This is a suit for possession filed by plaintiffs wherein the plaintiffs are required to establish their entitlement to the possession of the suit property.

7. The Hon'ble Supreme Court of India in a case titled as **Gautam Kundu vs. State of West Bengal and Anr.** (1993 SCR (3) 917) has observed as under:

a. That Courts in India cannot order blood test as a matter of course;

b. Where-ever applications are made for such prayer in order to have roving inquiry the prayer for blood test cannot be entertained;

c. There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act;

d. The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

e. No one can be compelled to give sample of blood for analysis.

8. In view of above observation, this court is of the opinion that the present application deserves dismissal. Accordingly, same is dismissed.

Application is disposed off accordingly.

Put up for final arguments on 14.01.2025.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
08.01.2025