

02.12.2023

Present : Sh. Sachet Sharma, Ld. Counsel with plaintiffs No.1&2.
None for defendants on call at 10.59am.

Amended memo is filed and spare copy placed on record may be collected by the defendants/counsel against acknowledgement.

Matter is fixed today for orders on application U/o 1, rule 10, read with Order 6, rule 17, and Section 151 CPC filed on behalf of the plaintiffs, on the ground that defendant No.1 was duly served but did not appear in the matter and was proceeded with exparte on 06.12.2021, thereafter, defendant No.1 filed an application for setting aside the exparte order, which was allowed by Order, dated 26.09.2022 and after that, defendant No.1 filed his written statement and averred therein that he had sold the suit property to his wife Smt. Shashi Bala, through Conveyance Deed, dated 16.09.2021. Copy of said Conveyance Deed has also been filed, which was executed by DDA in favour of Smt. Shashi Bala, and as such, plaintiff wishes to implead Smt. Shashi Bala and DDA as defendants No.4&5 respectively in the present suit by seeking amendment in the cause title of the suit, also para 15(A), further, to seek amendment in para no.16 and prayer clause (a) of the plaint. Sh. Sachet Sharma, Ld. Counsel for the plaintiff submitted that the Court can very well allow the amendment as the incident / alienation had happened during the pendency of the suit and the defendant No.1 has wrongfully, conveyed the property in

question to the proposed defendant No.4, i.e., his wife to avoid/defeat the decree to be passed in the case.

Reply to this application has been filed on behalf of the defendants, averring therein that the defendants are owners of the suit property through Conveyance Deed, dated 16.09.2021. The nature of suit would change if the proposed amendment is allowed, as the suit is for injunction and declaration. The application is not maintainable as appropriate court fee has not been affixed, further, the suit is at the stage of PE and after denying other averments, prayer is made for dismissal thereof. Sh. Puneet Tandon, Ld. Counsel for the defendants stated that the proposed amendments change the nature of the present suit entirely and therefore, the amendments cannot be allowed.

I have heard Ld. Counsels for the parties and perused the record. Perusal of the record would reveal that plaintiffs have filed the present suit for declaration, cancellation of sale documents, dated 20.05.1998 along with consequential relief of partition and permanent injunction against the defendants in respect of suit property bearing No.C-22, Gali No.2, Mandawali Fazalpur, Uchepar, Delhi-110092, which was owned by Smt. Premwati, i.e., mother of the parties.

From the perusal of copy of GPA, Agreement to Sell, Will etc., all dated 20.05.1998, duly notarized, it appears that the suit property was owned by Smt. Premwati, which was transferred by her in favour of her son Sh. Ashok Kumar, through the above said documents and Sh. Ashok Kumar further transferred the said property to his wife Smt. Shashi Bala through a duly registered Conveyance Deed, dated 15.12.2021, by DDA, i.e., during the pendency of the

present suit, as the present suit has been filed by the plaintiffs only on 31.01.2020, which clearly, shows that the suit property has been transferred by the defendant no.1 in favour of her wife, i.e., the proposed defendant No.4 Smt. Shashi Bala, during the pendency of the present lis, which is a subsequent event and law with regard to such amendment in the plaint is quite liberal and it is a trite law that Court can take judicial notice of such subsequent happenings and even alienation was made during the pendency of the proceedings and as such, the amendments sought are necessary for effective adjudication of the real controversy between the parties and would not change the nature of the present suit, and thus, same stands allowed. Application stands disposed off.

Amended written statement, if any, be filed by the defendants No.1 to 3, also written statement to the amended plaint be filed by the newly added defendant No.4 with copy to other side in advance and against receipt, for further consideration in the matter, on **05.02.2024.**

(Sanatan Prasad)
Additional District Judge-02 (East)
Karkardooma Courts/Delhi/02.12.2023