

11.12.2024

Present: Shri Anuj Kumar Garg, Id. Counsel for plaintiff alongwith plaintiff.
Shri Arjun Ghai, Id. Proxy counsel for defendant.
All three defendants in person.

It is submitted by Id. Counsel for plaintiff that his application u/s 73 of Indian Evidence Act is pending adjudication, however, defendants have not filed any reply to the application.

Proxy counsel for defendants submits that on LDOH the main counsel has already argued on the above said application.

Order on IA u/s 73 Evidence Act r/w Section 151 CPC.

Ld. Counsel for applicant submits that plaintiff is the owner of land/suit property bearing plot/house no. 38-A, 90 to 110 sq yards, New Ganesh Park, Rashid Market, Khureji Khas, Delhi-51. It is further submitted that being the owner of the property in question, the plaintiff has filed the present suit for possession against the defendants. Summons were issued to the defendant and defendant has filed their written statement alongwith documents i.e. GPA, Agreement to Sell, receipt and Will dated 25.11.1995. It is further submitted that defendants have claimed their ownership by virtue of forged and fabricated documents allegedly executed by Mohd. Yameen and Shami Ahmed, the predecessor in interest of the plaintiffs in favour of the defendants. It is further submitted that these documents are forged and fabricated and

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does not bear the signature and thumb impression of Mohd. Yameen and Shami Ahmad. It is further submitted that plaintiffs have bounden duty to prove said forgery, thus there is need to get it inspected through handwriting expert and expert in this field, who has to conduct due inspection of these original documents already on record in the present matter and further the handwriting expert be allowed to take the photographs of the documents, signature and thumb impression of Mohd. Yameen and Shami Ahmed on the forged and fabricated documents, to compare the same with the original signature and thumb impression of Mohd. Yameen and Shami Ahmed accordingly. It is further submitted that it will not cause any prejudice to any party but facilitate the proper and complete adjudication of the present matter. It is further submitted that defendants if succeeded in their illegal approaches then it will cause irreparable loss and injury which cannot be compensated in any manner. It is therefore requested that present application may kindly be allowed.

Reply to the said application has not been filed on behalf of defendant, however, proxy counsel for defendants submitted that on LDOH the main counsel has already argued on the above said application. It is submitted by Id. Counsel for defendants that present application is not maintainable at this stage and same is liable to be dismissed.

Heard. Record perused and considered.

Plaintiffs have filed the present suit for possession, damages, mesne profit, permanent and mandatory injunction against the defendants. Matter is at the stage of admission & denial of documents

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and issues are yet to be framed. Evidences are yet to be conducted from both the sides. Defendants have ample opportunity to cross examine the handwriting expert during evidence to prove their case. No prejudice would be caused to the defendants if the present application is allowed. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. In view of above as well as facts and circumstances of the case, the present application is being disposed off with the following order:

ORDER

The application u/s 73 Evidence Act r/w Section 151 CPC filed by plaintiffs is allowed.

It is made clear that plaintiffs shall bear all the expenses for calling the hand writing expert including his fee charges.

Plaintiffs are directed to suggest the name of authorized hand writing expert alongwith proper application for summoning him.

Hand writing expert is at liberty to inspect the alleged documents from the judicial record and further allow to take photographs of alleged documents only in presence of both the parties before the court.

Put up for admission & denial of documents and framing of issues on 18.01.2025.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
11.12.2024