

10.04.2019

Present: Plaintiff with Ld. Counsel Sh. Naveen Singhla.
Sh. Deepak Arora, Ld. Counsel for the defendants.
Defendant no. 2 Pankaj in person.

On behalf of defendants, reply to the application under Order 6 Rule 17 read with Section 151 CPC filed today. Copy supplied. Arguments on the said application heard today. Record perused.

Plaintiff filed the suit for declaration of ownership, possession and permanent injunction in respect of the first floor of property no. 21/98, Kalyan Puri, Delhi. Plaintiff claims ownership on the averment that his mother Smt. Shanti Devi bequeathed the first floor of the property to him on 22.01.1982 through an affidavit. Besides this, he claims to be co-owner of ground and second floor. It is significant to note that plaintiff seeks declaration of ownership of the first floor, whereas he seeks possession of both the first and the second floor from the defendants.

Defendants in the written statement claimed ownership of the entire property 21/98, Kalyan Puri, Delhi on the basis of a Will dated 11.09.2004 executed by Smt. Shanti Devi in favour of their mother Smt. Shakuntala.

Plaintiff nows wants to amend the plaint to incorporate the averments *vis-a-vis* the Will dated 11.09.2004 being set up by the defendants. In addition to this, he also wishes to seek a declaration that the Will dated 11.09.2014 is null and void.

The trial has not yet commenced. Issues are not framed as yet. There is no reason as to why the aforementioned application cannot be allowed. The plaintiff is not withdrawing any admissions from his plaint. He is

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merely seeking to add the averments *vis-a-vis* the will dated 11.09.2014 which according to him came to his knowledge only when the written statement was filed by the defendants. The amendments are necessary to determine the real questions in controversy between the parties. The aforesaid application of the plaintiff under Order 6 Rule 17 CPC stands allowed.

Written statement to the amended plaint filed on behalf of the defendants today. Copy supplied.

At this stage, Ld. Counsel for the defendants states that the suit is not maintainable as the plaintiff is seeking the reliefs in respect of the property in question on the basis of an affidavit of Late Smt. Shanti Devi. I have perused the amended plaint as also the entire record of the case. Plaintiff seeks the reliefs as aforesaid on the basis of affidavit dated 22.01.1982 of Late Smt. Shanti Devi. It appears from the record that the defendants are the grandchildren of Smt. Shanti Devi from her pre-deceased son Pyare Lal.

Plaintiff shall clarify on the aspect of maintainability of the suit on the next date i.e. 01.06.2019.

(MURARI PRASAD SINGH)
Addl. District Judge-03(East)
Karkardooma Courts-10.04.2019