

26.05.2025

Present: Shri Yogesh Kumar, ld. counsel for plaintiff.
Shri Prateek Mehta, Sh. Vikas and Sh. Puneet Sharma, ld.
counsel for D2 & 3.

Process issued to D1 received back with the report that no such person residing at the given address.

Ld. Counsel for plaintiff submits that they have only last known address as mentioned in the plaint and requested to issue process through publication. It is further submitted that he will file appropriate application for service of D1 through publication.

Proxy counsel for defendant no.2 & 3 submits that main counsel is not well and seeks one more week time to file WS.

In view of submissions made by ld. Counsel for D & 3, one week time to file WS is given to D2 & 3.

In the meantime, fresh summons be issued to D-1 upon PF/fresh Address for NDOH.

At this stage, ld. Counsel for plaintiff submits that application u/o 39 rule 1 & 2 CPC is pending for adjudication.

Arguments heard on the application.

Ld. Counsel for D2 & 3 submits that they have no intention to create any third party interest in the suit property till final disposal of the present suit. Ld. Counsel further submits that still there is a deficiency in the court fee.

Order on IA U/o 39 rule 1 & 3 CPC.

It is submitted that father of plaintiff late Sh. Dalip Malhotra was the owner of one property bearing No. 1/45, Geeta Colony, Delhi-31, admeasuring area 100 sq yards built up 3 storey building. Father of plaintiff expired in the year 2004. It is further averred that after the death of Sh. Dalip Malhotra, he left behind himself the plaintiff and defendants being his legal heirs, however, the defendant no.3 is in possession of the suit property with the possessory rights of plaintiff and rest of the defendants and the defendants are enjoying the rental income of the suit property but not given any share in such rental income to the plaintiff. The plaintiff and defendants are the legal heirs of late Sh. Dalip Malhotra and thus the plaintiff is having 1/4 each equally coparcener rights in the suit property. It is further averred that defendants are having malafide intention to grab the entire suit property and not interested to partition the suit property, the defendant on different. Plaintiff had requested the defendant on different occasions to partition the suit property. It is further submitted that plaintiff has a very good prima facie case in their favour and are likely to succeed in the same and also the balance of convenience lies in favour of the plaintiff and as against the defendants. Plaintiff prayed that an interim injunction be granted in favour of plaintiff and against the defendants thereby restraining them from dispossessing the plaintiff from the suti property for selling, assigning, transferring, repair, demolish any party/entire superstructure of the suit property,

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letting out, leasing out or creating any third party interest in the suit property. Hence, the present application.

Reply to the application has not been filed by D2 & 3. However, ld. Counsel for defendants submits that he will straightaway argued on the same. During the course of arguments, Ld. Counsel for D2 & 3 submits that they have no intention to create any third party interest in the suit property till final disposal of the present suit. Ld. Counsel further submits that though the plaintiff has filed the court fee of Rs.10,000/-, however, still there is a deficiency in the court fee.

Heard. Record is perused and considered.

Plaintiff has filed the present suit for partition, possession, declaration and permanent, mandatory injunction against the defendant. Defendants are in possession of the suit property. Matter is at the initial stage and issues are yet to be framed in the present matter. No prejudice would be caused to the defendants, if interim injunction is granted to the plaintiff. Defendant has ample opportunity to prove their defence during trial and after leading evidence in the present. Further, Ld. Counsel for defendants has submitted that they have no intention to create any third party interest in the suit property. Matter is now before the court and the court is duty bound to protect the suit property. In view of above, considering the facts and circumstances of the present case, to avoid multiplicity of proceedings, to protect the suit properties, the present application is being disposed off with the following order:

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ORDER

Application u/o 39 rule 1 & 2 r/w Section 151 CPC is allowed. Defendants and their agent, legal heir, authorized representative etc. are restraining from creating any third party interest in the suit property i.e. 1/45, Geeta Colony, Delhi-110031 till final disposal of the suit.

A status quo be maintained by parties in respect of suit property i.e. 1/45, Geeta Colony, Delhi-110031 till final disposal of the present case.

Put up for further proceeding on 12.07.2025.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
26.05.2025