

CS No.2539/16

Rajni Kakkar @ Munna Vs. Gurbachan Singh & Ors.

23.10.2019

Present: Plaintiff with Ld. counsel Sh. Paramjeet Singh.

Sh. Himat Akhtar, Ld. Counsel for all the defendants.

Kuldeep Singh, son of D-1 Gurbachan.

1. This is a suit for partition of the estate of Harbans Singh, possession, permanent injunction and for declaration of a registered relinquishment deed dt. 30.06.1992 as null and void. Plaintiff has already examined herself as PW1. One Ms. Harpreet Kaur @ Baby was examined as PW2 on 10.04.2019. An official from the Sub-Registrar office was examined as PW3 on 04.09.2019 and he exhibited a registered relinquishment deed dt. 06.04.2004 as Ex. PW3/A. The plaintiff now wishes to examine defendant no. 3 Ms. Lodi wife of Mohinder Singh to prove the relinquishment deed dt. 06.04.2004 Ex. PW3/A which purports to have been executed by her and others in favour of one Ms. Kiran wife of Kishan Singh.

2. Ms. Lodi, as per the plaintiff is not her sister; whereas defendants' counsel states that Ms. Lodi is the sister of plaintiff and defendants no. 1 and 2. Plaintiff's counsel states that in the relinquishment deed Ex. PW3/A Ms. Lodi has described herself to be daughter of late Tirath Singh. Plaintiff's counsel states that by way of this document Ex. PW3/A he wants to prove that Ms. Lodi is actually the daughter of late Tirath Singh and not of Harbans Singh.

3. Ld. Counsel for the defendants states that defendant no. 3 who is a

contesting defendant cannot be compelled to be a witness of the plaintiff against her volition. On the other hand, plaintiff's counsel states that examination of Ms. Lodi as a witness of the plaintiff is necessary to prove the relinquishment deed of 06.04.2004.

4. Plaintiff's counsel relies on the following two judgments in support of his arguments: (a) **Sh. Avadh Kishore Singh and Anr. Vs. Sh. Brij Bihari Singh & Ors.**, AIR 1993 PAT 122, and (b) **V. K. Pariasamy @ Perianna Gounder Vs. D. Rajan** AIR 2001 Mad 410.

5. Defendants' counsel on the other hand relies on the following two judgments: (a) **Vashram Daya Harijan Vs. Bijal Deva Harijan & Ors.** (1971) 12 GLR 40, (b) Judgment of Madras High Court in the Manging Director, **M/s V. V. D. & Sons P. Ltd. Vs. Miss Kajal Aggarwal**, in CS no.635/11, passed on 27.02.2017.

6. Having heard the submissions and perused the record, this Court is of the view that this prayer of the plaintiff cannot be allowed. Defendant no. 3 Ms. Lodi is very much a contesting defendant. Had she been a proforma defendant then the situation may have been different. In the judgment of Madras High Court being relied upon by the plaintiff herself the ratio laid down is that the practice of calling the defendant to give evidence on behalf of the plaintiff as a witness is condemnable. This prayer of the plaintiff is disallowed.

7. List on **29.10.2020** for PE.

(MURARI PRASAD SINGH)
Addl. District Judge-03(East)
Karkardooma Courts-23.10.2019