

CS 425/23

DAYAL CHAND DUA Vs. JAGDISH CHAND DUA @ MITH @
JOHNSON

23.09.2023

Pr: Sh. Ravinder Sharma, Id. Proxy counsel for the plaintiff.

Heard. Perused record and considered.

This is a suit for partition, possession, mesne profits, permanent and mandatory injunction.

1. It is submitted by Id. Counsel for plaintiff that plaintiff and the defendant No.1 and 2 are real brothers by blood relations.
2. It is submitted by Id. Counsel for plaintiff that the plaintiff is claiming ownership and partition on the basis of WILL executed by his deceased father in favour of the plaintiff and defendants only. Hence, other legal heirs of his deceased father are not necessary party to the suit.
3. On perusal of the plaint and material placed on record, it is apparent that the property No. 15/54, Geeta Colony Delhi, was initially belonged to the deceased father of the plaintiff, who passed away on 10.02.2023 leaving behind all his L.Rs including the plaintiff and defendants.

In para No. 2 of the WILL Deed placed on record by the plaintiff should be reproduced herein:

“I was married to Dharam Devi and out of his wedlock three sons named, Dayal Chand, Jagdish Chand and Bharat Bhushan and one daughter Smt. Nirmal were born, and all those children are alive after Dharam Devi death, I remained to Smt. Ram Devi and out of this wedlock one son named Sh. Rajesh Kumar Dua was born. At the time of remarriage my wife Smt. Ram Devi brought with her a male child named Shri Shyam Lal who have since then been living with me. He was brought up and educated by me like a son. He has been throughout quite obedient,

sincere and loyal and I also gave him love and affection like a father. He is now employed and is a helping hand to me. Now all children are married and living with their families separately. I am living with Sh. Rajesh Kumar Dua and Shri Shyam Lal Dua”.

It is pertinent to note that both the sons, with whom the father was living, are not given anything as per the WILL Deed.

Relevant provision of Order I Rule 10 CPC is reproduced here:-

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Clause 2: “Court may strike out or add parties- The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

4. In view of the submissions and material placed on record, this court is of the considered view that all the L.Rs of deceased father are necessary party to the present suit. Hence, the plaintiff is directed to implead all the legal heirs of his deceased father in the present suit and file the amended memo of parties till the NDOH.

5. This is suit for partition, possession, mesne profits, permanent and mandatory injunction. Issue summons of the suit and notice of the application under Order XXXIX Rule 1 and 2 read with section 151 of CPC to the defendants on filing PF & RC as well as through speed post and authorized courier.

Put up on 06.11.2023.

(Pooja Jain)
ADJ-03(East)
KKD Courts-23.09.2023