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CS 746/17

KAMAL SINGH Vs. NAND KISHORE SAMAL

15.10.2024

Present : Sh. Pankaj Chauhan, Ld. Counsel for the plaintiff with plaintiff.  
Defendant no. 1 and 2 are ex-parte.  
Sh. Randeep Singh, Ld. Counsel for the defendant no. 3 and 4 with defendant no.4.

PW-2/Sh. Mahesh Babu, Record Keeper from Sub-Registrar - VIIIA, Preet Vihar, Delhi and PW-3/Sh. Rajender Singh, Record Clerk from Record Room, East District, KKD Courts, Delhi are present, examined, cross-examined and discharged.

Diet money paid to the witnesses.

Reply is filed on behalf of defendant no. 3 and 4 to the application under Order XVI Rule 1 r/w Section 151 CPC filed on behalf of the plaintiff.

Arguments heard on the aforesaid application of the plaintiff.

It is submitted on behalf of the plaintiff that the plaintiff has already filed a list of witnesses but inadvertently he could not mention the name of the witness i.e. Manager from SBI, Vinod Nagar, West at B-139, Kamaun Square, West Vinod Nagar, Patparganj, Delhi-110092. It is submitted that the defendant no. 3 and 4 has raised the issue that the plaintiff has not paid the money of Rs. 17 lakhs to defendant no.1/Sh. Nand Kishore. However, the plaintiff has made the payment mentioned in the agreement and also paid the payment through cheque bearing no. 694167 of Rs. 10 lakhs and another cheque bearing no. 694718 of Rs. 7 lakhs on 25.01.2017. It is further submitted that the aforesaid witness i.e.

Manager from SBI, Patparganj, Delhi-110092 is the necessary witness who will prove the payment of Rs. 17 lakhs from the account of plaintiff/Sh. Kamal Kishore in favour of defendant no. 1.

It is further submitted that no prejudice shall be caused to the defendants, if the instant application of the plaintiff is allowed, however, the plaintiff shall suffer irreparable loss and injury, if the aforesaid applications are not allowed. It is prayed that the additional list of witness may kindly be taken on record and witness be permitted to depose before the court.

Per contra, the defendants opposed the said application by filing a reply stating that the plaintiff has concealed the true and material facts from the court. It is further submitted that the plaintiff has not come to the court with clean hands. It is further submitted that defendant no. 3 and 4 had filed a written statement in the year 2018 and denied the averment of the plaintiff qua payment of Rs. 17 lacs to defendant no.1 in their written statement para no. 11 of reply on merits. It is further submitted that after filing of the written statement in the present suit, defendant no. 3 and 4 herein has also filed a civil suit bearing no. 778/2018 titled as Trilochan Samal vs. Kamal Singh and Ors. It is further submitted that the plaintiff has every knowledge that the defendant has disputed the factum of the payment of consideration amount of suit property and the plaintiff had the opportunity to file a statement of account showing the details of payment to defendant no.1, however, he did not do the same. It is further submitted that the plaintiff filed first list of witnesses along with evidence affidavit of the plaintiff on 17.07.2019 in which three witnesses including the plaintiff were mentioned but the witness i.e. Manager from SBI, West Vinod Nagar Branch Delhi was not mentioned. Further, second list of

witness filed by the plaintiff was also taken on record, however, the said witness was also not included in the second list of witnesses.

It is further submitted that the plaintiff has not mentioned a single ground or sufficient reason or the circumstances which restrained the plaintiff to include the aforesaid witness. It is further submitted that cross-examination of the plaintiff has been concluded and had not proved the payment of consideration amount of the sale deed. It is further submitted that the present application was filed with malafide intention and is neither maintainable nor sustainable, therefore, liable to be dismissed.

Submissions heard. Record perused.

It is seen that the matter is at the stage of plaintiff evidence. The testimony of the said additional witness from State Bank of India, Vinod Nagar, West at B-139, Kamaun Square, West Vinod Nagar, Patparganj, Delhi-110092 is relevant and necessary to deciding the issues in the present matter. No prejudice shall be caused to the defendants, if the additional list of witnesses is taken on record and witness from SBI, Vinod Nagar, West at B-139, Kamaun Square, West Vinod Nagar, Patparganj, Delhi-110092 is summoned for examination as a plaintiff witness because the said witness is formal witness who will adduce in evidence documents maintained by the SBI bank. The defendant shall have adequate opportunity to cross-examine the witnesses. The delay in proceedings which has been caused by the filing of an additional list of witnesses by the plaintiff can be compensated by imposing of cost on the plaintiff.

In view of the submissions and in the larger interest of justice, application under Order XVI Rule 1 r/w Section 151 CPC for taking on

record the additional list of witness and examination of witness from SBI, Vinod Nagar, West at B-139, Kamaun Square, West Vinod Nagar, Patparganj, Delhi-110092 is allowed, subject to cost of Rs. 2000/- to be paid to defendant no. 3 and 4. The additional list of witnesses is taken on record, and witness Manager, SBI, Vinod Nagar, West at B-139, Kamaun Square, West Vinod Nagar, Patparganj, Delhi-110092 is summoned for the NDOH with the summoned record on filing of PF/RC.

Further, the plaintiff has also filed an application under Section 151 CPC for seeking direction to the witness/Sub-Registrar to bring additional records of Will and GPA both dated 24.09.2015.

The Ld. Counsel for defendant no. 3 and 4 submit that he does not wish to file reply to the said application and shall argue straightaway.

Arguments heard on the application.

It is submitted on behalf of the plaintiff that defendant no.3 /Sh. Trilochan Samal alleged in the written statement that defendant no.1/Sh. Nand Kishore had executed one GPA dated 24.09.2015 registered before Sub-Registrar, VIII-A, Preet Vihar, Delhi in favour of defendant no.3. It is further submitted by defendant no. 3 that one Will dated 24.09.2015 had been executed by defendant no. 1 in his favour. It is further submitted that the plaintiff has already made Sub-Registrar as witness but inadvertently he could not call the abovesaid documents from the Sub-Registrar.

Ld. Counsel for the defendant opposed the said application stating the same has been filed at a much belated stage, therefore, liable to dismissed.

Submission heard and record perused.

In the interest of justice, the application under section 151 of CPC stands allowed subject to the cost of Rs. 1000/- to be paid by the plaintiff to defendant no. 3 and 4 and the witness from Sub-Registrar - VIIIA, Preet Vihar, Delhi who has already been examined and has been discharged today be summoned again for NDOH with the record of GPA dated 24.09.2015 and Will dated 24.09.2015 presented/registered before Sub-Registrar, VIII-A, Preet Vihar, Delhi on filing of PF/RC.

Put up for remaining PE on **23.11.2024**.

**(SOMITRA KUMAR)**  
DJ-06,EAST/ KKD COURTS  
DELHI/15.10.2024 (s)