

C.S. No.: 3456/16

07.02.2017

Present:- Sh. S.S. Lathi, Id. counsel for the plaintiffs along with
plaintiffs in person.
Defendants in person.

Defendant no.1 filed photocopy of his PAN card and defendant no.2 filed photocopy of her Aadhaar card. The same are taken on record. They seek time to engage a counsel and also seek time to file written statement. Defendants are directed to file written statement within the stipulated time as prescribed under Order 8 of CPC with advance copy of the same to the Id. Counsel for the plaintiffs one week prior to the next date of hearing and the Id. counsel for the plaintiffs is at liberty to file replication, if any, to the written statement.

Ld. Counsel for the plaintiff submits that his application under Order 39 Rules 1 and 2 CPC is pending adjudication.

The plaintiffs have filed the present suit for partition, mandatory and permanent injunction against the defendants. It has been averred that late Smt. Daya Wati was the owner of the property bearing no. 35/409, Block-35, Trilok Puri, Delhi-91 (hereinafter referred to as 'suit property'); During her lifetime, due to the cruel behaviour of her son namely Manoj Kumar i.e. defendant no.1 and his wife namely Rani, Smt. Dayawati debarred defendant no.1 and his wife including their children from her movable and immovable property by publication dated 24.07.2009 in 'Rashtriya Sahara'. It has been further averred that Smt. Daya Wati expired on 29.12.2014 and on her demise, defendant no.1 along with his wife and children approached

the plaintiffs and requested them to give shelter in the suit property and assured that they will vacate the suit property after the Terahvi prayer of Smt. Daya Wati on which the plaintiffs and defendant no.2 allowed defendant no.1 to live at the ground floor of the suit property as shown in red colour in the site plan; After completing the last rites late Smt. Daya Wati, the plaintiffs requested defendant no.1 to vacate the suit property but defendant no.1 did not vacate the suit property. The plaintiffs issued a legal notice dated 11.08.2016 to defendant no.1 but defendant no.1 neither replied the same nor vacated the suit property. It has been further averred that after the receipt of the legal notice, the act of defendant no.1 and his family members became cruel towards the plaintiffs and defendant no.1 threatened the plaintiffs that either all of the plaintiffs relinquish their rights from the ground floor otherwise he will sell the ground floor of the suit property to any third party; Even defendant no.1 succeeded to hostile defendant no.2 who in connivance with defendant no.1 started to make pressure upon the plaintiffs to sell out the suit property and threatened the plaintiffs that they will sell the suit property to any third party.

In the application under Order 39 Rules 1 and 2 CPC, it has been further averred that the plaintiffs have good prima facie case in their favour; balance of convenience is also lie in favour of the plaintiffs and the plaintiffs will suffer irreparable loss and injury in case the defendants are not restrained from creating third party interest in the suit property. On these premise, the plaintiffs have filed the present application.

During the course of proceedings, the defendants submits that without prejudice to their rights and contentions in the present case, we shall not create third party interest in the property bearing no. 35/409,

Block No.35, Trilok Puri, Delhi-91 till the pendency of the present suit.

Joint separate statement of the defendants is recorded in this regard.

Ld. counsel for the plaintiffs submits that in view of the separate statement of the defendants, his application under Order 39 Rule 1 and 2 CPC be disposed off as satisfied.

In view of the separate statement of the defendants and the submission made by ld. counsel for the plaintiffs, **the defendants are hereby restrained from creating third party interest in the property bearing no. 35/409, Block No.35, Trilok Puri, Delhi-91 till the pendency of the present suit. Accordingly, the application under Order 39 Rule 1 and 2 CPC is disposed off.**

Re-notify this matter for replication, admission/denial of documents and framing of issues on 03.04.2017. Parties are directed to appear in person.

(Anurag Sain)
ADJ-2, East, Karkardooma Court,
Delhi/07.02.2017