

CS 245/24
RAJ KUMAR WALIA Vs. KIRAN WALIA

20.12.2024

Present: Ld. Counsel for plaintiffs with plaintiffs.
Ld. Counsel for defendant No. 1 to 3.
Ld. Counsel for D-4 and D-5.
Counsel for D-6 through V.C.

1. On the last date, it was recorded that D-6 has not filed its written statement and was eventually proceeded ex-parte. But, as per office noting, written statement of D-6 was filed on 04.10.2024. Thus, there is an apparent error in the last order-sheet. Accordingly, the same is corrected and written statement of D-6 is taken on record.
2. Application to take on record his written statement is disposed of. Copy already supplied.
3. D-6 is Sub-Registrar concerned. No prayer is sought against D-6 in this suit. **Thus, plaintiffs are called upon to clarify as to why D-6 has been impleaded in this case.**
4. At this stage, Counsel for plaintiff presses his application U/O under Order XXXIX Rule 1 & 2 CPC. Reply to the said application already filed by D-4 and D-5 on 15.10.2024. Reply also filed by D-6. No reply filed by D-1 to D-3.
5. Arguments on the said application heard. Vide the said application, plaintiff wants an interim order against D-1 to D-5 restraining them from selling, transferring, parting with possession or creating third party interest etc. with respect of

property bearing No. C-106, Gali No. 4, New Usmanpur, Delhi – 110053 measuring 100 sq yards.

6. In brief, it is the case of the plaintiffs that the aforesaid property was of their late father Sh. Gyan Chand Walia and he died intestate in 2019 leaving behind the plaintiffs and husband of D-1 (who is sibling of plaintiffs) as 4 legal heirs. Thus, as per them, the suit property is liable to be partitioned into 4 equal shares.
7. They claim that they have come to know that D-1/D-2 wanted to grab the suit property and eventually learnt that on the basis of a forged and fabricated Will dated 22.08.2018, D-2 has sold the suit property to D-4 and D-5.
8. At this stage, it is pertinent to note that D-1 to D-3 are LRs of Shashi Prakash Walia (who is the deceased brother of the plaintiffs).
9. Thus, plaintiffs have approached this Court inter-alia seeking a declaration that the aforesaid Will dated 22.08.2018 is null and void; the eventual sale by D-2 to D-5 and D-6 is illegal; and a decree of partition claiming 1/4th share each in the suit property falling to each of the plaintiffs and with the remaining 1/4th falling to D-1 to D-3.
10. On the other hand, D-1 to D-3 have filed a joint written statement claiming that late Gyan Chand Walia had left behind a notarized Will dated 22.08.2018 whereby the entire suit property was bequeathed in favour of D-2. Thus, D-2 became the sole and absolute owner of the aforesaid property and he eventually sold the same to D-4 and D-5.

11. D-4 and D-5 have also filed their separate written statement claiming that they are bonafide purchasers of the suit property.
12. Now, it is pertinent to note that it is not disputed before this Court that originally the suit property was of late Gyan Chand Walia and the plaintiffs herein are his children.
13. The dispute revolves around a Will dated 22.08.2018. While D-1 to D-3 claim that the same is a genuine document, plaintiffs allege that it is forged.
14. Now once it is taken that the plaintiffs are the children of the original owner of the suit property, a prima-facie case is found to be in their favour. Even though, D-4 and D-5 have claimed that they are registered owners of suit property, but they claim title on the basis of the Will under dispute in this case. Thus, in case an interim injunction is not granted in favour of the plaintiffs, much inconvenience would be caused to plaintiffs on account of further sale, if any, done by D-4 and D-5. This would lead to endless litigation which can be avoided by grant of interim injunction. The loss suffered by plaintiffs on refusal of injunction would be much greater than that of the defendants and such loss would not be easily assessed in terms of money.
15. In such circumstances, in my opinion, plaintiffs have been able to make out a case of interim injunction in their favour. Accordingly, D-1 to D-5 or any person claiming under them are restrained from transferring, selling, parting with possession, creating third party interest in suit property bearing No. C-106, situated at New Usmanpur, Delhi – 110053 measuring 100 sq yards till disposal of this suit.

16.Application is disposed of.

17.Parties are directed to file their respective affidavits of admission/denial within 8 weeks from today with advance copy to other side.

18.List for clarifications qua D-6, admission/denial of documents and framing of issues on 14.03.2025.

Aashish Gupta
DJ-01/NE/KKD/DELHI
20.12.2024