

**IN THE COURT OF MS. MANU VEDWAN,
ADDITIONAL DISTRICT JUDGE-2, NORTH EAST
DISTRICT, KARKARDOOMA COURTS, DELHI**

CS No. 185/2022

Shabnam & Ors.

....Plaintiffs

Versus

Mohd. Mashkoor & Ors.

.... Defendants

08.06.2023

**ORDER ON APPLICATION UNDER ORDER XXXIX RULE
1 & 2 READ WITH SECTION 151 CPC MOVED ON BEHALF
OF PLAINTIFFS.**

1. Vide this order, I shall dispose of an application under Order XXXIX Rule 1 & 2 read with section 151 CPC moved on behalf of plaintiff.

2. It is stated in the application under Order XXXIX Rule 1 & 2 read with section 151 CPC that the contents of the plaint be read as part and parcel of the application. It is stated in the plaint that the the parties to the suit that is the plaintiffs and defendants are the real sisters and brother. The parents of the parties to the suit that is father

Mohd. Yamin and mother Mst. Noor Jahan Begum expired on 18.11.2009 and 25.02.2015 respectively intestate by leaving their nine children. It is further stated that Mst Jahan Begum that is the mother of plaintiffs and defendants was the sole and absolute owner of the built up property bearing number C-5/6, *Gali* No. 6, Chauhan Banger, New Seelampur, Delhi admeasuring 104 square yards (hereinafter called the **suit property**). It is further stated that plaintiff number 1 is handicap and used to be completely dependent upon her parents. It is further stated that the defendant number 1 is in the exclusive possession and occupation of abovesaid built up/suit property. It is further stated that the five shops built up on the ground floor are under the possession and occupation of different tenants. It is further stated that defendant number 1 has recently let out the first floor portion of the suit property to the tenant for the monthly rent of rupees 25,000/-. Original documents of the suit property are also lying with the defendant number 1.

It is further stated that the plaintiffs and the defendants being the legal heirs of deceased mother inherited all the right, title and interest in the son and daughter ratio of 2:1. It is further stated that in the month of November 2021 in a family meeting, it was decided that all the co-sharers to get the share in the suit property. Defendant number 1 later on misguided the plaintiffs and obtained their signatures on documents presented before the Sub-Registrar stating that these documents are for partition of the suit property. It is further stated that in the first week of April 2022, defendant had thrown out the plaintiffs that is plaintiff number 1 and 2 out of the

suit property forcibly and illegally. Later on, it came to the knowledge of the plaintiffs that defendant number 1 had taken the signatures of plaintiffs on the relinquishment deed qua the suit property fraudulently and after misguiding them. It is therefore requested that their application under Order XXXIX Rule 1 & 2 read with section 151 CPC be allowed as they are under the serious apprehension that the defendants especially defendant number 1 may dispose of the suit property.

3. On the other hand, defendant number 1 and 4 have filed their common reply in which they have also stated that contents of written statement be read as part and parcel of reply. It is stated by the defendant number 1 and 4 that the allegations made by the plaintiffs are false and frivolous. It is further stated that after the death of the mother of plaintiffs and defendants, both the plaintiffs as well as other defendants with their free will without any pressure got executed the relinquishment deed vide registered documents number 3508, in book number 1, volume number 5356, on pages 106 to 112 duly registered on dated 31.12.2021 with the office of Sub-Registrar-IV, Seelampur, Delhi and in lieu of their shares, defendant number 1 had already made the payments to the plaintiffs as well as to the other defendants. As the plaintiffs have already taken their share in the form of money from defendant number 1, now they have left with no cause of action and accordingly, their application as well as suit be dismissed.

Defendant number 2 has similarly raised the objections that

the plaintiff as well as defendant number 2 and 4 had willfully executed the aforementioned relinquishment deed without any coercion, undue influence and pressure. It is also stated by defendant number 2 that it is the defendant number 1 who is taking care of their handicap unmarried sister after the execution of the relinquishment deed. Plaintiff number 1 had now deliberately taken away her sister and filed the collusion suit against the defendants. Therefore, there is no merit in the application of plaintiffs and it be dismissed.

Though, defendant number 3 has supported the case of plaintiffs in her written statement in which she has stated that defendant number 1 had misrepresented her and the plaintiffs regarding the execution of documents for the partition of the suit property but obtained their signatures on relinquishment deed. It is specifically stated by defendant number 3 that she was not able to understand the contents of the documents and neither provided with the copy of the documents. It is specifically stated that the relinquishment deed dated 10.12.2021 has no legal sanctity in the eyes of law.

4. I have heard the arguments advanced on behalf of both the parties and have perused the documents filed on both sides. During the course of submissions, Ld. Counsel for plaintiffs has submitted that the written statement filed by the defendants be not taken into account as they are delayed. Same is strongly opposed to by the remaining defendants stating that their written statement are well in

time and the plaintiffs are making bald submissions. Order on the application qua the written statement of defendant number 2 has been made separately.

It is stated by Ld. Counsel for defendant number 2 during the course of submissions that he has objections especially with respect to the non joinder of the party by the plaintiffs who had signed the relinquishment deed, the deficit Court fees when admittedly plaintiff number 1 and 2 are not in possession of the suit property and with respect to the pecuniary jurisdiction of the present Court to try the present suit. Same is strongly opposed to by Ld. Counsel for the plaintiffs. Ld. Counsel for plaintiffs has submitted that apart from making the bald allegations, Ld. Counsel for the defendant number 2 has failed to file any relevant documents to support his claim and further, these are the matter of trial.

5. In issuing temporary injunction the tests to be applied are (i) whether the plaintiffs have a *prima facie* case, (ii) whether the balance of convenience is in favour of the plaintiff, and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for temporary injunction is disallowed. This Court is required to see *prima facie* case, balance of convenience as well as irreparable loss. While, considering the question of *prima facie*, it is not to be confused with *prima facie* title. What is required is that the plaintiff has to show that he has *bona fide* raised a substantial question, which needs to be adjudicated at the trial of the suit. The plaintiff is thus required to *prima facie* establish that in the event of non-

interference by the Court, it will result in irreparable injury and substantial loss.

6. Also, while considering irreparable injury comparatively, which of the parties would be put to more or substantial mischief in the event of refusal to grant a temporary injunction and if the Court considers that the subject-matter of the suit must be maintained status quo, then discretion must be exercised in favour of the party seeking temporary injunction, so, that the subject matter of the suit in dispute can be preserved. In the instant case, plaintiffs are the co-sharers and the legality of aforementioned relinquishment deed executed by the plaintiffs in favour of defendant number 1 has already been agitated by the plaintiffs which has to be proved in accordance with law during the course of trial. Thus, it can be said that plaintiffs have been able to show *prima facie* case in their favour. Balance of convenience also lies in favour of the plaintiffs. Court is also convinced that the plaintiffs shall suffer irreparable loss and injury, if interim protection is denied to the plaintiff.

7. Accordingly, in the totality of circumstances, application under Order XXXIX Rule 1 & 2 read with section 151 CPC moved on behalf of plaintiff is disposed of as allowed. Both the parties are directed to maintain the status quo in respect of nature, title and possession of the suit property till the further orders.

8. Nothing stated herein above shall tantamount to expression of

opinion on the merits of the case.

9. Copy of this order be given *dasti* to Ld. Counsels for both the parties.

(Manu Vedwan)
ADJ-02/North-East, KKD Courts,
Delhi/08.06.2023