

SAVITA AND ORS Vs. MAHAVIR SINGH AND ORS

13.12.2023

Present: Ms. Priyanka, ld. LAC for plaintiffs.
Sh. Nitin Kumar Dixit, ld. counsel for defendant no. 1
along with defendant no.1.
None for defendant no. 2 and 3.

Written statement filed on behalf of defendant no. 1.
Coy supplied. The same has been filed with a delay. The delay is
condoned subject to cost of Rs.1000/- to be paid to the plaintiff.
Cost paid.

No written statement has been filed on behalf of
defendant no. 2 and 3 despite the lapse of statutory period.
Defence of defendant no. 2 and 3 is hereby struck off and they are
proceeded ex-parte.

The application under Order XXXIX Rule 1 & 2 r/w
Section 151 CPC moved on behalf of plaintiff has been pressed.
Heard on the application.

Put up for orders in the post-lunch session.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
13.12.2023

In the post-lunch session

Present : None

Vide this order, I shall dispose off the application
under Order XXXIX Rule 1 and 2 r/w Section 151 CPC moved on

behalf of the plaintiffs wherein the relief has been sought that the defendants be restrained from creating third party interest or demolishing the suit property i.e. property no. A-142, Street no. 19, South Gamdi Extension, Garhi Mendu, North East Delhi-53, measuring 90 square yards (hereinafter referred to as 'suit property') till the disposal of suit.

The case of the plaintiffs is that defendants are the real siblings of her late husband namely late Sh. Rambir Singh. It is stated that the suit property was in the name of late Sh. Chhote Lal, father-in-law of plaintiff, who was the absolute owner of the same. It is further stated that the plaintiffs and the defendants are in the possession of the suit property. It is further stated that Sh. Chhote Lal expired in the month of October 2010 *intestate*, and thus all the parties to this suit including the wife of late Sh. Chhote Lal were entitled to 1/5th share each in the suit property. It is further stated that after the death of wife of late Sh. Chhote Lal, the husband of the plaintiff, defendant no.1,2 and 3 were entitled to 1/4th share in the suit property. It is stated that Sh. Rambir Singh, husband of plaintiff no. 1 got expired on 17.01.2022 leaving behind the plaintiffs herein as the surviving legal heirs.

It is further submitted that several times requests were made for the partition of the suit property but no action was taken for effecting the partition of the suit property. It is further submitted that the defendants are threatening to create third party interest in the suit property and want to demolish the same.

The written statement has been filed on behalf of defendant no. 1 along with the reply to the present application wherein it is stated that marriage of late Sh. Rambir Singh with the plaintiff no. 1 was the second marriage and this fact has been concealed by the plaintiffs. It is further stated that the first marriage of late Sh. Rambir Singh was solemnized with Smt. Anju and from that wedlock three children were born. It is further stated that Sh. Rambir Singh had not obtained any divorce from his first wife Smt. Anju. It is further stated that the plaintiff has concealed about the other legal heirs of late Sh. Rambir Singh and late Sh. Chhote Lal and thus the present application is liable to be dismissed.

I have heard Ld. Counsels for both the parties and gone through the record.

The plaintiff is required to prove the following three ingredients under Order XXXIX Rule 1 and 2 CPC :-

- (i) a prima facie case in his favour;*
- (ii) the balance of convenience also lies in favour of the plaintiff and*
- (iii) irreparable loss and injury in case the injunction is not granted.*

It is not in dispute that Sh. Chhote Lal was the absolute owner of the suit property who died intestate. It is also not in dispute that the husband of plaintiff no.1 was one of the legal heir of deceased Chhote Lal. The marriage of plaintiff no.1

with late Sh. Rambir Singh is also not denied specifically but mentioned that late Sh. Rambir Singh did not take divorce from the previous wife. On this aspect, ld. counsel for plaintiff vehemently argued that the plaintiff no. 1 is the legally wedded wife of late Sh. Rambir Singh. The poser as to the valid marriage of plaintiff no. 1 with late Sh. Rambir Singh is a matter of trial.

Considering the fact that the ownership of Sh. Chhote Lal, father-in-law of plaintiff no.1, is not specifically denied in the written statement and the fact that plaintiff no.1 is the wife of one of the son of late Sh. Chhote Lal who died *intestate*, carves out *prima facie* case in favour of plaintiffs.

In the considered opinion of this court, the ingredients of balance of convenience and irreparable loss are also tilted in the favour of plaintiffs as if any further third party interest is created in the property in question then it will effect the rights/interest of the plaintiffs in the property in question. Moreover, if the defendants be restrained from creating third party interest in the property in question they will not suffer any kind of damage to their rights and the property will be saved from changing hands and the multiplicity of litigation will be avoided and on this aspect support could be drawn from the judgment titled as *Maharwal Khewaji Trust, Faridkot vs. Baldev Dass, Civil Appeal (2004) 8 SCC 488*.

In the light of the above said discussion, the plaintiffs are entitled to the interim protection as prayed for. Accordingly, defendants are hereby restrained from selling, alienating and/or

creating third party interest qua the suit property i.e. property no. A-142, Street no. 19, South Gamdi Extension, Garhi Mendu, North East Delhi-53, measuring 90 square yards or from demolishing the same, till disposal of the present suit. Nothing stated herein shall tantamount to an expression of opinion on merits during the trial of the present suit. The application is accordingly disposed off.

Replication be filed within two weeks with advance copy to opposite party.

Put up for completion of pleadings/admission-denial of documents/framing of issues on 12.02.2024.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
13.12.2023 sb