

30.08.2022 pk

**ORDER**

Vide this order, the Court shall dispose off the application of plaintiff under Order XXXIX Rule 1 & 2 r/w Sec. 151 CPC.

**Following arguments were submitted on behalf of plaintiffs :**

a) Plaintiff had purchased two properties i.e., bearing nos.E-49/J-71, Janta Mazdoor Colony, Welcome, Seelampur, Delhi, area measuring 22.5 sq. yards on 26.02.1999 alongwith her husband Late Sh. Nihaluddin jointly. However, later on, her husband transferred / sold his share in the aforesaid property in favour of plaintiff by way of GPA, agreement to sell, receipt and Will dated 07.06.2010. Plaintiff purchased another property jointly along with her husband bearing property no.217, Gali No.D-1, Shakti Vihar, East Dayalpur, Karawal Nagar, Delhi, out of khasra no.285/1 etc. (hereinafter referred to as suit property) which is still in joint name of plaintiff and her deceased husband.

b) Plaintiffs are the legal heirs of deceased Nihaluddin and shareholders as per Hanafi Mohammedan Law in the half share of the suit property, after his death. Defendant no.1 alongwith defendant no.2 and other family members have been residing in the suit property with the consent of plaintiffs.

c) After the death of deceased Nihaluddin, defendant no.1 got prepared a forged and fabricated Will executed in his favour by deceased Nihaluddin in respect of half of both of the aforesaid properties. Thereafter, defendant no.1 also executed a registered Will in respect of aforesaid both properties in favour of defendant no.2. Further, defendant no.1 got executed GPA, agreement/gift, affidavit etc. in respect of aforesaid both properties notarized on 19.02.2020 in favour of defendant no.2 by forging the documents.

d) Defendant no.1 has also stolen the original papers/documents of ownership and are in possession of defendant no.1 and 2. A complaint vide DD No.79 dated 14.06.2021 has been filed in PS Dayalpur, Delhi.

e) Defendant no.1 and 2 are not the owner of the suit property by virtue of forged and fabricated Will, yet defendant no.1 executed a Will in favour of defendant no.2 in order to create third party interest and to grab the suit property and also trying to renovate the same.

f) Deceased Nihaluddin died intestate on 31.01.2020 leaving behind his half share in the suit property. Plaintiff no.1 being his widow is the shareholder of 12.5% share, the sons are entitled to 2/3<sup>rd</sup> share and daughter are entitled to 1/3<sup>rd</sup> share each under Mohammad Law (Hanafi Sect).

g) After the death of deceased Nihaluddin, defendant no.1 alongwith other LRs are the joint owners and in possession of the suit property with all rights, titles and interest therein. No partition of the said property has taken place so far and the character of the suit property still continues to be joint and common. Plaintiffs have many

times requested defendant no.1 to partition the suit property but defendant no.1 always avoided the request of plaintiffs on one pretext or the other.

h) Defendant No.1 & 2 are keen to sell or transfer the part of the suit property and trying to raise a new construction over the suit property in order to defeat the present suit and in case they succeed in transferring the suit property or succeed in making addition or alteration in the suit property then the suit would become infructuous.

i) Plaintiffs have very strong and good prima facie case in their favour. The balance of convenience is also lies in favour of plaintiffs and against defendants. Plaintiffs shall suffer irreparable loss and injury if ad-interim injunction is not granted in their favour and against defendants.

j) The application may kindly be allowed, in the interest of justice.

**Plaintiffs have filed the following documents in support of their case :**

- (i) Copy of aadhar card of plaintiffs.
- (ii) Copy of GPA executed by Smt. Yasin Jehra in favour of Mohd. Nihaluddin and Smt. Saiyera Khatoon dated 18.12.2006 in respect of a piece of land area measuring 50 sq. yards, out of khasra no.285/1 etc., situated in the abadi of Gali No.1, Shakti Vihar, East Dayalpur & Revenue Village Mustafabad, Illaqa Shahdara, Delhi-94.

- (iii) Copy of Will, GPA, agreement/gift, affidavit and possession letter, all dated 19.02.2020 executed by Mohd. Anwar in favour of Mussarat Khatoon in respect of property bearing no.E-49/J-71, 12 sq. yards, with roof rights, at Majdoor Janta Colony, Welcome, Seelampur, Delhi.
- (iv) Copy of GPA, gift deed, affidavit and possession letter, all dated 19.02.2020 executed by Mohd. Anwar in favour of Mussarat Khatoon in respect of property bearing no.217, Gali No.D-1, Shakti Vihar, East Dayalpur, Karawal Nagar, Delhi, out of khasra no.285/1 etc.
- (v) Legal notice dated 14.07.2021.
- (vi) Speed post receipt.
- (vii) Tracking reports.
- (viii) Copy of complaint made by Mohd. Anwar to SHO PS Dayalpur dated 14.06.2021.
- (ix) Notice dated 15.07.2021 sent by Smt. Saiyera Khatoon to SR-I, Kashmir Gate, Delhi.
- (x) Copy of reply by SR-I, Kashmiri Gate, Delhi to the notice dated 15.07.2021.
- (xi) Copy of death certificate of Nihaluddin.
- (xii) Site plan.
- (xiii) Photograph of suit property.

Defendants have not contested the present application either by filing a formal reply or by addressing arguments.

**Following documents were filed on behalf of defendants :**

- (i) Site plan.
- (ii) Copy of GPA dated 19.02.2020 executed by Mohd. Anwar (defendant no.1) in favour of Mussarat Khatoon(defendant no.2) in respect of property bearing no.217, Gali No.D-1, Shakti Vihar, East Dayalpur, Karawal Nagar, Delhi, out of khasra no.285/1 etc.
- (iii) Copy of agreement/gift, affidavit and possession letter, all dated 19.02.2020 executed by Mohd. Anwar in favour of Mussarat Khatoon in respect of property bearing no.217, Gali No.D-1, Shakti Vihar, East Dayalpur, Karawal Nagar, Delhi, out of khasra no.285/1 etc.
- (iv) Copy of GPA, agreement/gift, affidavit, possession letter and Will, all dated 19.02.2020 executed by Mohd. Anwar in favour of Mussarat Khatoon in respect of property bearing no.E-49/J-71, Janta Mazdoor Colony, Welcome, Seelampur, Delhi, area measuring 22.5 sq. yards.
- (v) Copy of GPA dated 21.11.2016, executed by Nihaluddin and Sahro Bano in favour of Mohd. Anwar in respect of property bearing no. E-49/J-71, Janta Mazdoor Colony, Welcome, Seelampur, Delhi, area measuring 22.5 sq. yards.
- (vi) Copy of possession letter dated 21.11.2016 executed by Nihaluddin and Sahro Bano in favour of Mohd. Anwar in respect of property bearing no. E-49/J-71, Janta

- Mazdoor Colony, Welcome, Seelampur, Delhi, area measuring 22.5 sq. yards.
- (vii) Copy of Will deed dated 21.11.2016 executed by Nihaluddin in favour of Mohd. Anvar in respect of property bearing no. E-49/J-71, Janta Mazdoor Colony, Welcome, Seelampur, Delhi, area measuring 22.5 sq. yards.
- (viii) Copy of agreement for gift dated 21.11.2016 executed by Nihaluddin and Smt. Sahro Bano in favour of Mohd. Anvar in respect of property bearing no. E-49/J-71, Janta Mazdoor Colony, Welcome, Seelampur, Delhi, area measuring 22.5 sq. yards.
- (ix) Copy of Family Will dated 26.08.2011 executed by Nihaluddin in favour of Mohd. Anwar in respect of property bearing no.217, Gali No.D-1, Shakti Vihar, East Dayalpur, Karawal Nagar, Delhi, out of khasra no.285/1 etc.
- (x) Copy of death certificate of Nihaluddin.

### **Findings of the Court**

Before granting the injunction, the court must be satisfied about the following aspects:

- (i) that the plaintiff must make out a prima-facie case in support of a right claimed by him;
- (ii) that he will suffer irreparable injury, if the injunction, as prayed, is not granted and that there is no other remedy open to him by which he can protect himself

from the consequences of apprehended injury; and  
(iii) the balance of convenience must be in favour of the plaintiff.

On the basis of materials placed on record by the parties, the court has come to the conclusion that the claims and counter-claims of the parties can be decided only after they lead respective evidences. Further, the interim relief sought by plaintiffs is the main relief and the main relief cannot be granted in an application under Order 39 Rule 1 and 2 CPC being barred by law and mandated by the Hon'ble Superior courts in various judgments. **[Ref: State of UP & Ors. Vs. Ram Sukhi Devi (2005) 9 SCC 733; Ashok Kumar Vajpayi Vs. Dr. (Smt.) Ranjana Vajpayi AIR 2004 All 107; Morgan Stanley Mutual Fund Vs. Kartick Das (1994) 4 SCC 225; Burn Standard Company Ltd. & Ors. Vs. Din Bandhu Majumdar & Anr AIR 1995 SC 1499].**

In view of the above, no ground is made out to allow the application. **The application of plaintiffs under Order XXXIX Rule 1 & is disposed off accordingly.**

MONA TARDI KERKETTA  
ADJ01/NE/KKD/DELHI  
30.08.2022 pk