

CS327/18

GEETA VERMA Vs. VIRENDER KUMAR VERMA

23.01.2024

Present: Sh. S.K. Verma & Ms. Pooja Chaddha, ld. counsel for plaintiff along with plaintiff.
Ms. Shalini, ld. counsel for defendant no. 1 to 3.
Ms. Priyanka Aggarwal, ld. LAC for the LRs of defendant no. 4 along with the LRs.
Defendant no.5 in person.

An application under XIV Rule 5 CPC moved on behalf of plaintiff is pending disposal. Reply to the present application was filed. Copy supplied.

Heard on the present application. By virtue of present application, it is stated that defendant no. 4 is claiming ownership rights in the suit property no. A-228/1 on the basis of oral partition dated 01.01.2015. It is stated that no issue was framed regarding this averment of defendant no. 4. It is stated that the issue be framed to the effect that whether defendant no. 4 is the owner of suit property bearing no. A-228/1 and onus of this issue must be placed upon defendant no. 4. It is also submitted that the issue be also framed that whether defendant no. 4 was the licensee of defendant no.1 to 3 in respect of suit property bearing no. A-228/1 and the onus to this effect be placed upon defendant no.1 to 3.

Reply was filed to the effect that the property no. A-228/1 was transferred to defendant no. 4. It is stated that the present application is not maintainable.

Heard. Record perused. This is the suit for partition filed by the plaintiff against her brothers and sisters. The

defendant no. 4 got expired during the proceedings of the present suit. In view of the written statement filed by defendant no. 4, additional issue is required to be framed as to whether the defendant no. 4 is the owner of property no. A-228/1, Gali no.10, South Gamri, Delhi and the onus to prove this issue will be on the legal heirs of defendant no. 4. There is no requirement of framing issue as to the alleged capacity of defendant no. 4 being the licensee of defendant no. 1 to 3 as this fact is not relevant to the present suit for the partition and if the issue be framed as to the alleged capacity of defendant no. 4 being the licensee, then it will create confusion in the present suit and there will be multiplicity of cause of action. Accordingly, the additional issue is hereby framed as under :

Additional issue: Whether defendant no. 4 is the owner of property no. A-228/1, Gali no. 10, South Gamri, Delhi ? OPD-4

Application disposed off accordingly.

Considering the pleadings and the issues framed, this court is of the considered opinion that if the defendant no. 1 to 3 are able to prove the Will in their favour qua the suit property, then it will shorten the litigation and the suit of the plaintiff is bound to fail. In the same manner if defendant no. 4 be able to prove her exclusive ownership over the property no. A-228/1, then the suit of the plaintiff qua this property would fail. However, if defendant no. 1 to 3 are not able to prove the Will or the defendant no. 4 not able to prove her exclusive ownership, then the parties to the litigation would be entitled to their shares in the

suit properties. In these circumstances, the defence evidence is to be led first. Reliance on this aspect could be placed upon the judgment titled as **Smt. Poonam Bhanot vs. Virender Sharma & ors. Civil Suit no. 587/2017, IA no. 10136/18, decided by Hon'ble High Court of Delhi on 18.07.2022.**

Put up for DE on 12.03.2024.

Affidavit(s) of the defendant's witness(es) be filed within two weeks with advance copy to the opposite party against receiving two days prior to the next date of hearing.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
23.01.2024 sb