

**Vinod Kapur
Vs.
Vijay Kapur Ors.**

15.09.2022

Present: Mr. B. L Mehta, Ld. Counsel for the plaintiff along with plaintiff inperson.
Mr. Nathu Ram, Ld. Counsel for the proposed defendant.
Defendant no. 1 in person.

Vide this order, I shall dispose off the application under Order 1 Rule 10 CPC moved on behalf of the proposed defendant namely Sh. Gulshan Kapoor.

Ld. Counsel for the proposed defendant submits that Sh. Gulshan Kapoor being legal heir of Late Sh. Parma Nand Kapur and uncle of the plaintiff and defendants herein is also entitled to a share in the suit property bearing no. A29B, Vijay Nagar, Delhi. It is stated that the proposed defendant is a necessary party and he will be prejudiced if he is not made party to the present suit.

Ld. Counsel for the defendant no. 1 has supported the impleadment of proposed defendant and submits that the proposed defendant is also residing in the same property which is the subject matter of the present suit. He submits that since the present is the suit for partition, therefore, all the legal heirs of Late Sh. Parma Nand Kapur are necessary parties. It is further stated that the suit property

has never been divided between the legal heirs of Late Sh. Parma Nand Kapur till date.

Per contra, Ld. Counsel for the plaintiff opposes the claims of both the defendant no. 1 as well as the proposed defendant. It is submitted that the proposed defendant has moved this application at a belated stage. He also submits that the original leased property bearing no. A-29, Vijay Nagar, Delhi originally measured 128 sq. yards and the same was partitioned between the father of the plaintiff (68 sq. yards were given to him) and the proposed defendant (60 sq. yards was given to him) herein. He states that the present application is false and frivolous and is only moved with the intention of delaying the present matter. He submits that the present suit is filed for 68 sq. yards by the plaintiff against his siblings for enforcement of the hand written family settlement dated 28.07.2013 and the proposed defendant is a stranger to the present suit.

Submissions heard. Record perused.

The application of the proposed defendant is dismissed as the averments made in the application are not supported by any documentary evidence in his favour . This court on perusal of WS of defendant no. 1 found that the defendant no. 1 in para 5 has stated that the suit property was initially allotted to one Sh. Mohinder Singh who transfer the property to grandfather of the plaintiff and defendant no. 1, 2 and 3 (Late. Sh. Parma Nand Kapur) and was inherited by Sh. Nand Lal Kapur (father of the plaintiff and defendant no. 1, 2 and 3) and Sh. Gulshan Kapur (uncle of the plaintiff and defendant no. 1, 2

and 3), proposed defendant herein. It is also stated that out of the said property, 60 sq. yards were given to Sh. Gulshan Kapur for satisfying his interest and claim and he has been enjoying the said portion. Despite making such submissions in his WS, the defendant no. 1 now in his reply to the present application has taken a contrary stand and had stated that no partition ever took place and the suit property is an ancestral property belonging to Late Sh. Parma Nand Kapur. It appears that defendant no. 1 has now joined hands with the proposed defendant herein to delay the matter. Moreover, the suit pertains to the partition of A-29/B (admeasuring 68 sq. yards) and not partition of A/29 (admeasuring 128 sq. yards). In light of the averments made by the plaintiff as well as the defendant no. 1 in their pleadings, the parties are not at issue/dispute on the point that 60 sq. yards out of the total property admeasuring 128 sq. yards was handed over to the proposed defendant herein and now the subject matter of dispute between the parties is whether a family settlement was actually carried out qua 68 sq. yards of suit property between the legal heirs of Late Sh. Nand Lal Kapur i.e. the plaintiff and defendants. Therefore, in my considered view, the proposed defendant is not a necessary / proper party in the present suit and hence, the present application is dismissed.

Be put up for PE on **06.12.2022.**

Shivali Bansal
ADJ-03, Rohini Courts
North District, Delhi
15.09.2022