

CS No. 57676/16

Laxmi Devi Vs. Suresh Mendiratta

16.10.2018

Present: Counsels for the parties.

Matter is fixed for consideration on the application of defendant for withdrawal of the consent for DNA test which he had given before the court vide statement dated 29.07.2016. On the basis of the consent of the defendant, the application of the plaintiff for DNA test to prove the parentage of defendant was allowed on 29.07.2016. This application for withdrawal of the consent has been filed on 08.03.2017.

It is argued by the counsel for defendant that present suit is for recovery of possession and permanent injunction and has no concern with the paternity of the defendant. It is submitted that plaintiff is claiming right over the suit property on the basis of Will dated 08.02.2008 executed by Smt. Geeta Devi who is the sister of plaintiff. It is stated that plaintiff in the plaint has averred that defendant is her son. The said fact has been denied by the defendant as he is the son of her sister Smt. Geeta Devi. It is submitted that while the matter was at the stage of evidence of plaintiff, she filed the present application for

DNA test, which is not at all required in the present matter. It is submitted that there is no issue with respect to paternity of the defendant.

Per contra, it has been argued by the counsel for plaintiff that the consent once given cannot be withdrawn. It is further argued that DNA test would prove that defendant is the son of plaintiff, the fact, which he is otherwise denying in order to claim exclusive right over the suit property, claiming himself to be the son of Smt. Geeta Devi.

Heard counsels for the parties and perused the complete record file.

There is no dispute to the fact that the suit property was owned by Smt. Geeta Devi. There is also no dispute to the fact that defendant is also in possession of the suit property. Plaintiff is claiming the possession of the suit property on the basis of the Will dated 08.02.2008 purportedly to be executed by Smt. Geeta Devi. The said Will has been challenged by the defendant as he has averred that same is false and fabricated. Whether or not plaintiff is entitled to the reliefs sought on the basis of the Will is a matter of evidence. Even, if, it is assumed that defendant is the son of plaintiff, still then, she will have to prove the Will on the basis of which she is asserting her

right over the suit property. No purpose shall be served in getting the DNA test done because the issue is not with respect to the paternity of the defendant. The application is accordingly allowed.

Matter is at stage of cross-examination of PW1 which is pending since 2010.

Put up for cross-examination of PW1 on 21.12.2018.

Kiran Gupta
ADJ-03, Rohini Courts,
North District, Delhi
16.10.2018