

SANTOSH SHARMA Vs. SUSHMA ARORA AND ORS
02.11.2023

Present: Ld. Counsel for the plaintiff.

Defendant no.4, 6 and 8 in person.

Vide this order I shall dispose of the application under Order XXXIX Rule 1 & 2 CPC and under Order VII Rule 14 CPC, both moved on behalf of the plaintiff.

As per the case of plaintiff, she is daughter of late Sh. Raja Ram Sharma who was the owner and in occupation of the property bearing Khasra No.409 and 410/1(7 bigha 11 biswa) Malikpur Chhawani, Delhi also known as 1 GT Karnal Road, Delhi. During their life time, parents of the plaintiff gave away their third child namely Vijay Kumar in adoption to uncle Pt. Thakur Das and Vijay Kumar always resided with Pt. Thakur Das as a son because Pt. Thakur Das had no other child. Father of plaintiff allowed Sh. Vijay Kumar Sharma to reside and also to run his business as tenant in the name and style of M/s Reliable Surgicals and Traders and M/s V.K. Industries. Mother and father of plaintiff had already died leaving behind the plaintiff as their sole legal heir. Sh. Vijay Kumar Sharma died on 29.05.1983 leaving his legal heirs who are arrayed as defendant no.4 to 8. The claim of the defendants no.4 to 8 for compensation was rejected in land acquisition proceedings with respect to the said property. The plaintiff had applied for mutation of the aforesaid properties in the year 1999 and the application of plaintiff was adjourned sine die in view of the acquisition proceedings.

It is further stated that the plaintiff challenged the acquisition proceedings before the Hon'ble High Court and the Hon'ble High Court vide order dated 23.12.2014 held that the acquisition proceedings are deemed to have lapsed and the appeal of central government before Hon'ble Supreme Court was dismissed on 31.08.2016.

It is further stated that defendants no.4 to 8 got the said property mutated in their favour by disclosing falsely themselves to be owner of the said property, however, the said mutation order was set aside by the competent authority vide order dated 25.08.2020. It is further stated that in the year 2020 the defendants no.4 to 8 unlawfully alienated parts of the property in their illegal occupation to defendant no.1, 2 & 3 and now the defendant no.1, 2 & 3 are in illegal occupation of property i.e. 135 sq yds at Khasra No.409, Malikpur Chhawni, Delhi-110033 (hereinafter referred to as suit property)

It is further stated that plaintiff in the month of August 2020 through her sons, requested the defendant no.1 to 2 to vacate the suit property, but the defendants absolutely denied the claim of the plaintiff. It is prayed on behalf of the plaintiff that to preserve the subject matter of the suit property, the defendants be restrained in any manner to alienate or part with the suit property.

In reply to the present application, it is stated on behalf of the defendants that the plaintiff has no rights or interest in the suit property and has no locus standi to lay any claims and defendant no.1 to 3 has continued in the possession and occupation of the suit property and is the owner of the same

through adverse possession and documents showing continued possession have also been placed on record. It is further stated that plaintiff has been living away with her husband since 1964-65 and has throughout been aware of the factum of the possession and ownership of the subject land vesting in late Sh. Vijay Kumar Sharma and defendants. The plaintiff has also been aware of the adverse possession and ownership of the land in question since long.

I have given my due consideration to the submissions made on behalf of the parties. I have also gone through the written submissions filed on behalf of both the parties. Record perused.

It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case, the balance of convenience is also in his favour and he will suffer irreparable loss and the injury if injunction is not granted.

In **Mukesh & Others Vs. Bharat Singh & Others, 2008(101) DRJ 362**, the Hon'ble Delhi High Court has held *Section 50 – Succession to agricultural land – sons alone entitled to succeed to the holding – Mutation entry attained finality – Deletion of Sub-Section (2) to Section 4 of Hindu Succession Act, 1956 due to the promulgation of the Hindu Succession (Amendment) Act, 2005 – Amending Act not given retrospective*

operation – successions taken place prior to Amendment Act cannot be disturbed as vested rights cannot be taken away.

In the present case defendant is in possession of suit property since long and present suit has been filed by the plaintiff in the year 2021 only. In view of this, it can be said that there is no prima facie case in favour of the plaintiff, balance of convenience is also not in his favour and no irreparable loss is likely to be suffered by the plaintiff.

Accordingly, present application under Order XXXIX Rule 1 & 2 CPC stands disposed of as not allowed.

Nothing mentioned herein above shall tantamount to be an expression of opinion on the merits of the present case.

Now coming to the second application under Order VII Rule 14 CPC filed on behalf of the plaintiff.

By way of this application plaintiff seeks to place on record additional documents. Since the case is at the stage of completion of pleadings only. No prejudice shall be caused to the defendant in case the present application is allowed. Further, delay, if any, can be compensated in terms of money. Accordingly, present application under Order VII Rule 14 CPC filed on behalf of the plaintiff is allowed subject to cost of Rs.5,000/- to be paid to the defendants jointly.

Put up the case for further proceedings, on 21.03.2024.

(Kishor Kumar)
ADJ-04, North, Rohini Courts,
Delhi/02.11.2023