

POONAM TOKAS Vs. PHOOLWATI

08.08.2024

Present: Mr. Amit Rana, Ld. Counsel for plaintiff.
Mr. Neeraj Bansal along with Ms. Prerna, Ld. Counsel for defendant no. 1 and 6.
Mr. Vicky Bhardwaj, Proxy counsel for defendant no. 2.
Mr. Bhupender Sharma, Ld. Counsel for proposed defendant.
None for defendant no. 3 to 5.

ORDER

1. Ld. Counsel for plaintiff submits that he does not wish to file replication. Heard. Request allowed.
2. Arguments heard on the application of proposed defendant under Order 1 Rule 10 CPC.
3. Be put up for order at 4:00 PM.

**Shivali Bansal
DJ-03, Rohini Courts
North District, Delhi
08.08.2024**

At 4:00 PM.

Present: None.

ORDER

1. Vide this order, I shall dispose off the application of the proposed defendant under Order 1 Rule 10 CPC.
2. Ld. Counsel for proposed defendant has stated that the proposed defendant is one of the necessary party in the present suit as he has a

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valuable right in the property of his grandfather, namely, Late Sh. Rajinder Thukral and therefore, is a necessary / proper party.

3. *Per contra*, Ld. Counsel for plaintiff has not filed any reply to the present application. He has stated that the father of the proposed defendant is defendant no. 6 in the present suit and is alive. It is stated that the present suit is filed by the plaintiff for intestate succession of the property of Late Sh. Rajinder Singh, who is the father of plaintiff as well as defendant no. 2 to 6 and husband of defendant no. 1. It is stated that the grandson of Late Sh. Rajinder Singh is not a necessary / proper party in the suit during the lifetime of defendant no. 6 and therefore, the application should be dismissed.

4. Heard. Record Perused.

5. On perusal of plaint, it is found that the present suit is filed for intestate succession / partition of the property of Late Sh. Rajender Singh. It is stated that the plaintiff is entitled to 1/7th share in the suit property along with other defendants and therefore, the present suit is filed. It is a settled law under The Hindu Succession Act that the property of a common ancestor, who died intestate after the passing of the Hindu Succession Act, 1956 (as amended upto date), shall be governed by Section 8 of The Hindu Succession Act, 1956. According to which, only the Class-I legal heir shall be entitled to a share in the property of the deceased common ancestor. As per the schedule annexed with The Hindu Succession Act, 1956, a grandson whose father is alive cannot claim a share in the property. Accordingly, the grandson does not

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have any right in the suit property and is not a necessary / proper party to the present suit.

6. During the course of arguments, Ld. Counsel for proposed defendant has relied upon a Will dated 07.12.2009 of Late Sh. Rajinder Singh. This Will is placed on record by defendant no. 6 to show that he is the exclusive owner of the suit property. It was submitted by the counsel for proposed defendant that the grandson derives his right in the suit property through his father i.e. defendant no. 6 on the basis of Will dated 07.12.2009. The arguments of the proposed defendant is fallacious as on bare perusal of the Will dated 07.12.2009, it is evident that only defendant no. 6 i.e. Sh. Karambir was given / bequeathed all right, title and interest in the suit property, to the specific ouster of the grandson, Sh. Kartik, who is also the proposed defendant. Therefore, the proposed defendant has no right, title or interest in the suit property at the moment and is not a necessary / proper party.

7. The findings of this court to deal with the present application is without prejudice to the rights of parties in the suit. The Will dated 07.12.2009 is to be proved during trial and the reliance upon the same is only of the purpose of deciding the application at hand.

8. Accordingly, the application of the proposed defendant under Order 1 Rule 10 CPC is dismissed.

9. Be put up for completion of pleadings on **05.11.2024**.

Shivali Bansal
DJ-03, Rohini Courts
North District, Delhi
08.08.2024