

CS No. 369/21

Poonam Tokas Vs. Phoolwati

03.09.2022

Present: Mr. Amit Rana, Ld. Counsel for the plaintiff.
Mr. Neeraj Bansal, Ld. Counsel for the defendant no. 1
and 6.
None for defendant no. 3, 4 and 5 despite service.

It is submitted by Ld. Counsel for defendant no. 1 and 6
that the WS alongwith an application under Order VII Rule 11 CPC on
behalf of defendant no. 1 and 6 are already filed.

**Be put up for orders on the application of defendant
no. 1 and 6 at 4:00 pm.**

**Shivali Bansal
ADJ-03, Rohini Courts
North District, Delhi
03.09.2022**

AT 3:45 PM

Present: None for the parties.

Vide this order, I shall dispose off the application of
defendant no. 1 and 6 under Order VII Rule 11 CPC.

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Ld. Counsel for the defendant no. 1 and 6 has argued that the plaintiff has no *locus standi* to file the present suit as the suit property is the self acquired property of defendant no. 6. He also submitted that this is a collusive suit filed by the plaintiff in collusion with defendant no. 2 to 5 with the malafide objective to illegal gain from defendant no. 1 and 6. It is also submitted that defendant no. 6 is the real and absolute owner of the suit properties mentioned at Sl. No. (i) to (iv) of the plaint by virtue of Will dated 07.11.2009 executed by Late Rajinder Singh father of plaintiff and defendant no. 2 to 6. It is also submitted that plaintiff is not in the possession of the suit property either on the date of filing of the suit or at any point of time. Therefore, the plaint should be rejected on the ground that the plaintiff has not claimed appropriate court fees when he himself has valued the suit for more than Rs. 80 Lacs. It is further argued that the plaintiff has not pleaded the details of formation of the Hindu Undivided Family so as to claim his right in the suit property.

Ld. Counsel for the plaintiff has chosen not to file any reply to the same.

Per Contra, Ld. Counsel for the plaintiff argues that unless the Will dated 07.12.2009, is proved by the defendant no. 1 and 6, it cannot be conclusively established that the defendant no. 1 and 6 are the absolute owner of the suit premises. It is further argued that the

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case of plaintiff is that the father of plaintiff had died intestate and therefore, he is entitled for 1/7th share of the suit property. It is further pleaded that plaintiff is in the joint possession of the suit property and therefore, the court fees has not been affixed by him.

Heard. Record perused.

The Ld. Counsel for defendant no. 1 and 6 has raised triable issue and it is a settled principal of law that the defence of the defendants is not to be looked into at the time of deciding the application under Order VII Rule 11 CPC. The case of the plaintiff is for partition of the suit property and he seeks to establish his share in the suit property by pleading intestate succession in his favour. The plaintiff has also pleaded the joint possession of the suit property and has not even sought possession as a relief. Therefore, the question of deficient court fees does not arise at this stage. The application is accordingly dismissed.

Let steps be taken for service of defendant no. 2 on filing of PF/RC & Speed Post as well as through all permissible e-modes, returnable for **23.11.2022**.

Interim order to continue till NDOH.

**Shivali Bansal
ADJ-03, Rohini Courts
North District, Delhi
03.09.2022**