

IN THE COURT OF MS. SHIVALI BANSAL
ADDITIONAL DISTRICT JUDGE-03 (NORTH)
ROHINI COURTS, DELHI



CNR No. DLNT010071912019
CS No. 405/19

REENA BHARGAV
Vs.
MADHU BHARGAVA & ANR.

01.10.2022

ORDER

1. Vide this order, I shall dispose of the application under Order VI Rule 17 CPC filed on behalf of the plaintiff.
2. The plaintiff has filed the present suit for possession for immovable property and permanent injunction. It is stated in the plaint that the suit property was a joint estate of late Ram Gopal Bhargava and his elder son Ramesh Bhargava and the same is a three storey built up house in two parts situated at Plot no. 1, SBI Colony, Delhi. It is further stated that the said plot of land measures approximately 300 sq yards and building erected thereon has two parts, left hand side portion ad-measuring 150 sq yards and the right hand side also ad-measuring 150 sq yards belonging to Ramesh Chand Bhargava. It is further stated that the property was

constructed by Late Ram Gopal Bhargava alongwith his three sons including the husband of plaintiff from the funds raised through loans and savings of Smt. Shashi Devi Bhargava (wife of late Ram Gopal Bhargava). It is further stated that since the demise of late Sh. Ram Gopal in the year 1977, the husband of the plaintiff Sh. Umesh Bhargava had repaid the substantial loans. It is further submitted that with passage of time, portion on the right hand side of the suit property was occupied by Ramesh Chand Bhargava, Suresh Bhargava and Dinesh Bhargava and ground floor with 1/4th basement of the left hand side suit property was held by Mr. Rakesh Bhargava, first floor was with Mr. Suresh Bhargava and second floor with terrace with in the possession of Sh. Umesh Bhargava i.e. the husband of plaintiff. It is further stated that after the demise of Sh. Umesh Bhargava, the plaintiff stepped into the shoes of Umesh Bhargava being his legal heir. It is further stated that the husband of the plaintiff in February 1990 shifted to his own house in Bank Vihar, Pitampura, Delhi. However, all the four brothers continued to live in the suit property. It is further submitted that the year 1996, the renovation of the suit property was carried out and the husband of the plaintiff constructed his portion on the second floor as only one room was existing on both sides of the property. Thereafter, due to financial crunch, the husband of the plaintiff had sold his own house. After demise of the husband of the plaintiff, the plaintiff and her son demanded back the possession of their share in the suit property from his brothers, to no avail. It is stated that in the year

June 2019, plaintiff has heard that the defendant no. 1 and her daughter in law are looking for a prospective buyer to sell and dispose of entire first and second floor, left hand side portion and therefore, the plaintiff has filed the present suit for possession of the left hand side suit property in her favour.

3. In the WS, the defendant has taken a defence that on 10.12.1996, the husband of the plaintiff i.e. Sh. Umeh Chand Bhargava has relinquished his one fifth share in the half share of the concerned property in favour of Sh. Suresh Chand Bhargava i.e. the husband of defendant no. 1 and ended all his bows with the concerned property, in lieu of Rs. 10 lacs for construction in his personal residence at Bank Colony, Pitampura. It is further submitted that on 19.06.1997, the suit property was mutated in the name in the DDA in the name of Sh. Ramesh Chand Bhargava, Sh. Suresh Chand Bhargava, Sh. Rakesh Bhargava and Sh. Dinesh Bhargava and immediately thereafter construction of four rooms was done on the second floor of the concerned property. It is further stated that on 03.02.2000, a conveyance deed was registered in the names of Sh. Ramesh Chand Bhargava, Sh. Suresh Chand Bhargava, Sh. Rakesh Bhargava and Sh. Dinesh Bhargava, the notices were sent to Umesh Chand Bhargava, Smt. Sushila Bhargava and Smt. Saroj Bhargava for objections. That following the conveyance deed, on 23.03.2000, the partition deed was executed harmoniously between Sh. Ramesh Chand Bhargava, Sh. Suresh Chand Bhargava, Sh. Rakesh Bhargava and Sh. Dinesh

Bhargava. It is also stated tat on 17.01.2019 Sh. Suresh Bhargava expired and on 17.04.2019, his son Sh. Ritesh Bhargava also expired and now the defendants are the owners of the aforesaid property.

4. By way of the amendment application, the plaintiff has sought amendment of para no. 7. The plaintiff sought to plead that in the year 1996, an oral partition of division of the portion among all the owners / co-sharers was effected and by way of said partition, it was agreed that ground floor with basement would go to the share of two brothers namely Rakesh Bhargava and Dinesh Bhargava. The first floor of the property would fall in the share of Sh. Suresh Bhargava and the second floor having one room at that time alongwith terrace would fall to the share of Sh. Umesh Bhargava, the husband of the plaintiff. It is also sought to be pleaded that husband of the plaintiff had constructed two rooms of his own income by selling off gold ornaments of plaintiff.

5. The defendant in his reply to the abovesaid application submits that the suit of the plaintiff is itself not maintainable as the same is hopelessly barred by limitation. Therefore, the present application should also be dismissed. He also stated that the plaintiff in the amendment application has not properly valued the suit for the purposes of court fee and the plaintiff is not able to explain as to why these pleadings were not incorporated earlier. It is also stated that the plaintiff is trying to set up inconsistency by displacing the earlier plea in the plaint.

Submissions heard. Record perused.

6. Since the matter is at the stage of completion of pleadings, no prejudice would be caused to the defendant, if, the amendment application is allowed. To deal with the aspect of limitation, the defendant has already moved an application under Order 7 Rule 11 CPC which is pending adjudication. Therefore, the objection raised by the defendant that since the suit is hopelessly barred by limitation the present application should not be allowed, is misplaced. Lastly, the objection as to the inconsistent pleas taken by the plaintiff by way of present amendment is also not sustainable as earlier also, the plaintiff is allowed to raise inconsistent alternative pleas in order to prove his cause of action. The only bar is from pleading mutually destructive inconsistent pleadings. By way of amendment, the plaintiff is trying to allege that the suit property was partitioned in the year 1996 as opposed to the defence of the defendants. Whether the plaintiff would succeed in proving this plea is not to be looked at this stage. Moreover, this is a pre-trial amendment and the courts are allowed to take liberal view in allowing the same so as to determine the real controversy between the parties.

Accordingly, the application of plaintiff under Order VI Rule 17 CPC stands allowed.

**Announced in open
Court on 07.10.2022**

**Shivali Bansal
Additional District Judge-03
North District, Rohini Courts,
Delhi**