

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



CNR No. DLNT010090082017
CS No. 809/17

Vijay Pal Singh @ Jai Pal Sing & Ors
Vs.
Harpal Rana @ Gullu & Ors.

ORDER

20.01.2023

1. Vide this order, I shall decide the application of the plaintiffs under Order 26 Rule 9 CPC.
2. The present suit is filed by the plaintiff for seeking declaration along with consequential relief of permanent and mandatory injunction.
3. The facts as stated by the plaintiff in his plaint are as under:-
 - i. It is stated that Late Sh. Narayan Singh was the father of plaintiff no. 1 and 2 and grand father of defendant no. 1, 2, 3 and 4, who expired on 20.12.1977.
 - ii. It is stated that after the death of Late Sh. Narain Singh, there was partition by way of family settlement and all the sons of Late Sh. Narain Singh were given their respective shares in the suit property. It is stated that one of the son, namely, Sh. Rajender died unmarried on 19.10.2015 i.e. after the partition of the property. It

is stated that before the death of Sh. Rajender, he was in possession of one room on the ground the floor and two rooms, verandah, bathroom, kitchen, toilet etc in the old Haveli Complex of Late Sh. Narain Singh, situated in Village Kadipur, Delhi-110036 (herein after referred to as “**Suit property**”).

- iii. It is the case of the plaintiff that since Sh. Rajender had died without leaving behind any class I legal heirs, the suit property is to be divided amongst the surviving brothers i.e. plaintiff no. 1 and 2, as surviving brothers are the Class II legal heirs.
 - iv. It is the case of the plaintiff that plaintiffs are the successors in interest and the rightful owners of the suit property, however, the defendants with a view to grab the portion of Late Sh. Rajender are trying to break open the lock and enter into the possession without any right whatsoever.
 - v. It is also stated that defendant no. 1 to 3 are trying to get their names recorded with the electricity department and therefore, the present suit is filed for seeking declaration and consequential relief of permanent and mandatory injunction.
4. Ld. counsel for the plaintiff in the accompanying application under Order 26 Rule 9 CPC has stated that appointment of Local Commissioner is indispensable as the defendant no. 1, 2 and 3 are trying to break open the locks and enter into the suit property. It is also stated that the defendant no. 1, 2 and 3 are trying to raise construction on the suit property and for that purpose have collected

- some building material. It is also stated that the belongings of deceased Sh. Rajender is lying at the suit property and it is to meet the ends of justice that a Local Commissioner be appointed at the cost of the plaintiff, to visit the suit property and to report as to what articles are there inside the suit property, to make an inventory and to see that no new construction is existing.
5. Ld. counsel for the defendant no. 1 to 3 has not filed any reply to the application of the plaintiffs under Order 26 Rule 9 CPC. Defendant no. 4 is already proceeded ex-parte.
 6. *Per Contra*, Ld. Counsels for defendant no. 1 to 3 has argued that no family settlement ever took place. It is stated that the pleadings of the plaintiff as to the date, month or year of the family settlement is silent. It is further stated that plaintiffs have not placed on record the site plan of the entire old Haveli with total area, width, length, directions. It is stated that the site plan filed by the plaintiffs is with respect to only one portion of the Haveli and therefore, the plaint is incomplete, vague, insufficient and misleading. It is also stated that no partition took place between the parties and Late Sh. Rajender has already relinquished his share in favour of the father of defendant no. 1 to 3.
 7. In response, Ld. Counsel for the plaintiffs has stated that the appointment of Local Commissioner is necessary as he will be able to give the actual status of the entire old Haveli.
- Heard. Record perused.

8. To meet the ends of justice, the application of the plaintiff is allowed. Therefore, **Sh. Amit Kumar Gupta, Advocate is hereby appointed as Local Commissioner** for submitting a report regarding the actual status of the entire old Haveli, inventory of all movable items at the suit property **i.e. one room on the ground the floor and two rooms, verandah, bathroom, kitchen, toilet etc in the old Haveli Complex of Late Sh. Narain Singh, situated in Village Kadipur, Delhi-110036**, status of construction and if any new construction is found, possession of parties at different portions of Haveli along with photographs on **25.01.2023 at 3:00 PM.** Local Commissioner be informed on his mobile number **9953338021**. The fees of Local Commissioner is fixed at Rs. 10,000/- which shall be paid by the plaintiff against receipt duly issued by the Local Commissioner. The plaintiff and defendants are directed to be present for the inspection of the Old Haveli on **25.01.2023 at 3:00 PM.**

**Announced in the open
Court on 20.01.2023**

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