

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



CNR No. DLNT010050442021
CS No. 313/21

Lata Gupta & Ors.
Vs.
Arun Gupta & Ors.

ORDER

27.02.2023

1. Vide this order, I shall dispose off the application of the plaintiff under Order 39 Rule 1 and 2 CPC.
2. The present suit is filed on behalf of the plaintiff seeking partition, possession, declaration and permanent injunction. It is stated that the father of the plaintiffs, namely, Late Sh. Hari Kishan Gupta expired on 18.11.2011 leaving behind plaintiffs and defendants (including the wife and son of a pre-deceased son). It is stated that father of the plaintiffs was the absolute owner of the property bearing H. no. F-6/4, Second Stop, Model Town, Delhi-110009 consisting of Ground, First and Second Floor admeasuring 80 sq. yards (*herein after referred to as “suit property”*). It is stated that defendant no. 1 to 4 are in the possession of the suit property and are enjoying the suit property. It is the case of the plaintiff that after the demise of the deceased father, the plaintiffs along with the defendants were entitled to 1/7th

undivided share in the suit property being the legal heirs. That the plaintiff no. 1 and 2 have also sent a legal notice dated 21.06.2021 to the defendants calling upon the defendants to partition the suit property. The same was duly replied by the defendants. In the said reply dated 07.07.2021, the defendants have disclosed about a Will dated 30.08.2003 stating that the entire suit property is already bequeathed by the deceased father in the name of defendant no. 1 to 3 in equal proportions i.e. 1/3rd share each. It is stated that the Will was presented by the defendants to illegally grab the share of the plaintiff.

3. In the WS, it is stated that the present suit is barred by limitation as the Registered Will under challenged is dated 30.08.2003 and the present suit is filed in 2021. It is stated that after the demise of father, defendant no. 1 and 2 and Late Sh. Narender Gupta became co-owners of the entire built up suit property to the exclusion of all others. It is also stated that the Will dated 30.08.2003 is well within the knowledge of the plaintiffs as the deceased father during his lifetime had himself informed this fact to all his seven children, including the plaintiff. It is also stated that the suit property is mutated in the name of the defendants in the Municipal Corporation of Delhi in 2012 and it is the defendants who are carrying out the maintenance, repairs, renovation work at the suit property. It is further stated that the property tax, electricity and water charges are also borne by the defendants.

4. By way of the present application, plaintiff has sought the defendants should be restrained from selling, mortgaging, alienating and from creating any third party interest in the suit property.
5. During the course of arguments, Ld. Counsel for the defendants has stated that by virtue of the Registered Will, the defendants are the owners of the suit property to the exclusion on the plaintiffs.

Heard. Record perused.

6. In the present case, the plaintiffs are asserting their share in the suit property by virtue of being a Class I legal heirs of Late Sh. Hari Kishan Gupta whereas the defendants are asserting to be the exclusive owners of the suit property by virtue of a Registered Will dated 30.08.2003. It is an admitted case between the plaintiffs and the defendants that their deceased father, namely, Late Sh. Hari Kishan Gupta was the absolute owner of the suit property and without the Will being proved in favour of the defendants, they cannot claim exclusive ownership upon the suit property. To the contrary, the plaintiffs are claiming to be the owners of 1/7 th share of the suit property on the basis of intestate succession. Therefore, at the stage of an application under Order 39 Rule 1 and 2, it cannot be said that the plaintiffs do not have *prima facie* case in their favour. In fact, balance of convenience also lies in their favour and irreparable loss will be caused to the plaintiffs in case, the application in hand is not allowed. Accordingly, the application of the plaintiffs under Order 39 Rule 1 and 2 CPC is allowed and the defendants are hereby restrained from

selling, mortgaging, alienating and from creating any third party interest in the suit property.

**Announced in the open
Court on 27.02.2023**

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