

19.07.2025

Present: Sh. Rishi Sehgal and Sh. Midhun Aggarwal, counsel for the plaintiff.

Sh. Tara Chand Sharma, Counsel for the defendants.

1. Counsel for the plaintiff presses his application dated 24.03.2025 for recalling PW-1 Sh. Sanjay Lohia.

2. It is argued that plaintiff has filed suit for Partition and Mandatory Injunction. Suit property is D-13, Plot No.17, Model Town, Part – II, Delhi. In the written statement in para no. 1 A, it has been averred by the defendants that three other properties were also inherited.

3. It is argued by the counsel for the plaintiff in replication in reply to para 1A of the written statement, it is specific case of the plaintiff that the property mentioned in para no.1 A are not inherited property. For this purpose, Sale Deed dated 03.10.2008, Form 32 dated 04.12.2006 and Form 32 dated 01.05.2007 are sought to be proved by the calling witness. It is argued that these documents are already on record and inadvertently could not be exhibited during earlier examination in chief.

4. Per contra, counsel for the defendants strongly opposes the application. Reliance is placed on case titled as *Shubhkaran Singh vs. Abhayraj Singh & Ors., decided on 05.05.2025* to contend that provisions of order 18 rule 17 CPC cannot be invoked on mere asking of the parties. Per contra, to this submission, reliance is placed upon para no.10 of the same judgment by counsel for the plaintiff.

5. It is further argued that leave to produce these documents under Order 7 rule 14 CPC was not sought. It is further argued that in para no.29 and 34 of the examination in chief of affidavit of Sh. Sanjay Lohia, reference to

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these documents is already made and despite that these documents were not exhibited.

6. Heard. File perused.

7. Perusal of the record shows that the plaintiff has filed suit for Partition and Mandatory Injunction. Suit property is D-13, Plot No.17, Model Town, Part – II, Delhi. In the written statement in para no. 1 A, it has been averred by the defendants that three other properties were also inherited.

8. It is rightly argued by the counsel for the plaintiff that in replication in reply to para 1A of the written statement, it is specific case of the plaintiff that the property mentioned in para no.1 A are not inherited property.

9. This court is satisfied that proof of Sale Deed dated 03.10.2008, Form 32 dated 04.12.2006 and Form 32 dated 01.05.2007 are sought to be proved by the calling witness, is essential for just adjudication of the present case. These documents are material.

10. The submission on behalf of the defendant that these documents are already on record and inadvertently could not be exhibited during earlier examination in chief furthers the case of the plaintiff that in the earlier examination in chief affidavit these documents were mentioned inadvertently could not be exhibited.

11. The submission on behalf of the defendant that in case titled as *Shubhkaran Singh vs. Abhayraj Singh & Ors., decided on 05.05.2025*, it has been held that provisions of order 18 rule 17 CPC cannot be invoked on mere asking of the parties, is correct. However, in para no.10 of the same judgment, it has been held that powers under 151 CPC can be invoked. This court is satisfied that the documents sought to be produced, are necessary for just adjudication of the present case.

12. Further submission on behalf of the counsel for the defendant

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that leave to produce these documents under Order 7 rule 14 CPC was not sought, is factually correct but since, these documents are necessary for just adjudication of the case, leave is granted at this stage.

13. It is further rightly argued by the counsel for the defendant that in paras no.29 and 34 of the examination in chief of affidavit of Sh. Sanjay Lohia, reference to these documents is already made and despite that these documents were not exhibited. The same appears to be inadvertent error and plaintiff should not suffer due to fault of his counsel.

14. **The application dated 24.03.2025 for recalling PW-1 Sh. Sanjay Lohia, is allowed.** Let PW-1 be examined fresh on additional affidavit to be supplied in advance to the counsel opposite at least a week before the next date of hearing. **Counsel for the defendant will be at liberty to cross-examine PW-1, as per law.**

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15. Counsel for the plaintiff next presses his application dated 24.03.2025 seeking permission to examine additional public witness.

16. It is argued that to prove the Sale Deed dated 03.10.2008, Form 32 dated 04.12.2006 and Form 32 dated 01.05.2007, Sub-Registrar, Kashmere Gate and concerned official from Ministry of Cooperate Affairs may be allowed to be examined in addition.

17. Per contra, Counsel for the defendant contends that even list of witness has not been filed by the plaintiff. Further plaintiff is delaying the proceedings.

18. Heard. File perused.

19. It is rightly argued on behalf of the plaintiff that to prove the Sale Deed dated 03.10.2008, Form 32 dated 04.12.2006 and Form 32 dated 01.05.2007, Sub-Registrar, Kashmere Gate and concerned official from Ministry of Cooperate Affairs may be allowed to be examined in addition.

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Since, the documents are necessary for just adjudication, the public witnesses are allowed to be summoned on the next date of hearing. **Counsel for the plaintiff is at liberty to summon these witnesses as per law, on filing of PF. Diet money be paid on spot.**

20. The submission on behalf of the defendant that that even list of witness has not been filed by the plaintiff, is factually correct. Plaintiff is directed to file list of witnesses within one week from today with advance copy to the counsel opposite.

21. Plaintiff is directed not to delay proceedings and assist court in expeditious disposal.

22. **Application dated 24.03.2025 seeking permission to examine additional public witness, is disposed off in the above terms. Counsel for the defendant will be at liberty to cross-examine additional witnesses, as per law.**

To come up for evidence of PW-1 Sh. Sanjay Lohia and remaining PE pursuant to order passed today on **30.08.2025**.

Copy of additional evidence of PW-1 be supplied in advance to the counsel opposite.

(VIKRAM BALI)
DISTRICT JUDGE-2/NORTH/ ROHINI
COURT/DELHI/19.07.2025