

26.11.2022

At 03:30 pm

Present : None.

In the morning, Sh. Sahil Talwar, Ld. Counsel for plaintiffs with plaintiff no. 2 and 3 and Sh. J. C. Mahindru, Ld. Counsel for defendant no. 1 and 2 had appeared and they were apprised that the orders will be passed in post lunch session.

The submissions have been heard on the application of plaintiff under Section 151 CPC and application of defendant no. 1 and 2 under Order 39 rule 2 CPC and the case file is perused.

The plaintiffs have filed the present suit for a decree of declaration that the registered gift deed dated 14.10.2005 and the mutation record on the basis of said gift deed are null and void and of no legal consequence of whatsoever nature and cancel the said gift deed. The decree of declaring a registered Will dated 28.10.2005 is also sought to declare it as null and void and of no legal consequences. The plaintiffs have further claimed the decree of declaration declaring that plots no. WZ-1972 and WZ-1973, Rani Bagh, Shakur Basti and construction raised thereon are joint hindu property of plaintiff and defendant no. 2 or in the alternative, to decree that the Will dated 16.10.2000 was last validly executed Will of Sh. Somnath Taneja. The plaintiffs have claimed the decree of permanent injunction

restraining the defendant no. 1 Smt. Rekha Taneja from selling, alienating or creating third party interest in respect of plot no. WZ-1972 and super structure constructed thereon. The plaintiffs have prayed for decree of mandatory injunction directing defendant no. 1 and 2 to give account/details of belongings and various movable assets of deceased Sh. Som Nath Taneja and Smt. Ishwar Devi Taneja which are in their possession for distribution amongst legal heirs as per last validly executed Will dated 16.10.2000 of Sh. Som Nath Taneja. The plaintiffs have claimed passing of decree of mandatory injunction thereby directing defendant no. 1 to give accounts/details of rent being received from tenant in property at plot no. WZ-1972 and defendant no. 2 in the property at WZ-1973.

Upon completion of pleadings of the parties, issues were settled on 07.03.2011 and upon the application under Order 15 rule 3 CPC, the issue no. 5 and 6 were modified and re-framed on 24.09.2011. Number of opportunities have been availed by the plaintiffs but their evidence is still not complete.

By way of application under Section 151 CPC as filed on 25.03.2022 by the plaintiffs, they are seeking directions to the defendants to remove the encroachments and remove the plastic sheet cabin installed in verandah in property bearing no. WZ-1973, Rani Bagh, Delhi. It is submitted that both the properties are inter connected to each other since its construction and has a common entry/gate to enter both the properties and it is alleged that due to the encroachment and making a cabin of plastic sheet, the entry of both the properties got blocked and plaintiffs are facing problem in entering the premises.

On the other hand, defendant no. 1 and 2 have filed

the application under Order 39 rule 2 CPC, praying for order to allow them to get the plan sanctioned for additional construction and rectification/reconstruction of the existing structure with her own funds and resources and directions to plaintiff no. 3 to provide the duplicate key of common passage of ground floor of property no. WZ-1973, leading to the accommodation in occupation of defendant no. 1 and 2. It is submitted by the defendant qua the fixing of plastic sheet that the same had been installed by spending funds from own pocket to protect the property as the front courtyard of the property became public place which was being utilized by neighbours for dumping their rubbish and unused materials.

The defendants have not filed any counter claim in the present suit. Thus, in the absence of claim of any final relief, interim relief till the decision of the suit cannot be claimed by them. If the property needs reconstruction or requires improvements then the appropriate authority may be approached by the defendants for the requisite sanction. The suit properties are two plots and the construction is to be made separately on both the plots and if there is a joint passage, then the parties may approach the concerned authority seeking permission to make the separate entry of both the properties. Needless to say that if there is any improvisation in the suit property made by applicants then the same will be subject to the final outcome of the suit for which they have undertaken in the application itself. So far as application of the plaintiffs is concerned, it appears that the application is moved at a belated stage only to drag the trial and counter to the application of defendant no. 1 and 2 as they have in the application filed under Order 39 rule 2 CPC on 20.05.2019,

have mentioned about the fixing of plastic sheet in April 2019 to protect the property. Thus, the plaintiffs are not entitled to any orders in this regard.

Both the applications are dismissed accordingly.

Put up for plaintiff's evidence on **04.03.2023**.

(SUNIL CHAUDHARY)
ADJ-04, North West,
Rohini Courts, Delhi
26.11.2022