

24.02.2024

Present: None.

File perused. The present suit has been filed by the plaintiffs on 11.01.2011 for decrees of declaration, permanent and mandatory injunction. One prayer is in respect of decree of declaration declaring the bill dated 28.10.2005 vide registration no. 30564, book 111 Volume 2814 on page no. 57-60 with Sub Registrar VI as null and void and of no legal consequences of whatsoever nature.

The issues were settled by Ld. Predecessor of this Court on 07.03.2011 and in respect of prayer of decree of Will, issue no. 4 was framed to the effect that whether the plaintiff is entitled for decree of declaration of Will dated 28.10.05 as null and void ? OPP.

Now by way of present application, the plaintiff is seeking to strike out the said issue and praying for framing the additional issue in the manner 'Whether the Will is genuine or not ? OPD'.

After the settlement of issues, plaintiffs were asked to lead the evidence and they were examined as many as four witnesses and closed their evidence on 04.03.2023.

It is averment of the plaintiffs made in the plaint that

Sh. Som Nath Taneja, father of plaintiffs purchased two plots bearing no. WZ-1972 and WZ-1973, Rani Bagh, Shakur Basti, Delhi and raised construction on the plot no. WZ-1972 from his own funds and thereafter put the same in the hotch pouch of joint hindu family property as well as the other plot after raising construction upon it. It is averred that he with his four sons lived in the houses constructed on the said plots as co-owners being the members of joint hindu family. It is averred that he had executed a Will dated 16.10.2000 registered with the Office of Sub Registrar VI bequeathing both the plots and construction raised thereon in equal proportions to his all the four sons. It is averred that Som Nath Taneja was suffering from various old age ailments which had aggravated in year 2004 and defendant no. 1 and 2 under the planned conspiracy to take undue advantages of his old age decided to shift to their house at Prashant Vihar and insisted to take him along with them. It is alleged that his proper care was not taken by them. It is averred that he had never apprised the plaintiffs and the defendant no. 3 & 4 about execution of subsequent Will dated 28.10.2005 and Gift Deed dated 14.10.2005. The plaintiffs were served upon a legal notice by defendant no. 2 in which the fact of execution of Will dated 28.10.2005 was mentioned.

As the plaintiffs are seeking decree from the court qua declaration of the Will as null and void so burden to prove that the Will dated 28.10.2005 is not executed by their father as per law is upon them. To succeed in the suit, the plaintiffs have to discharge their burden, as such, I am of view that the issue is properly framed and does not require any amendment or

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modification. The application is dismissed accordingly.

Put up on **27.04.2024** for defendant evidence.

(SUNIL CHAUDHARY)

ADJ-04/North-West

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