

CS DJ No:- 165/23

**DEEPIKA MEENA AND ANR Vs. UMESH SINGH MEENA
AND ANR**

04.05.2023

Present:- Plaintiff no. 1 in person along with Sh. R. K. Prasad, Ld. Counsel for both the plaintiffs.

Defendant no. 1 in person along with Sh. Bijay Kumar, Ld. Counsel for both the defendants. (Fresh Vakalatnama filed on behalf of defendant no. 1, same is taken on record).

Ld. Counsel for defendants undertakes to file memo of appearance on behalf of defendant no. 2 during course of the day.

Some time is sought on behalf of defendants to file written statement along with application for condonation of delay. Let same be filed with advance copy to opposite side.

Put up for consideration on **25.07.2023**.

At this stage, Ld. Counsel for plaintiffs has pressed his application under Order XXXIX Rule 1 and 2 CPC for grant of interim injunction.

Present suit for Partition, Possession, Permanent and Mandatory Injunction is filed by plaintiff no. 1 (sister-in-law of defendant no. 1) and plaintiff no. 2 (son of plaintiff no. 1), who is nephew of defendant no. 1. It is averred on behalf of plaintiffs that suit property bearing no. RZ-58/8, Gali No. 8, Tughlakabad Extension, New Delhi ad-measuring 50 sq. yards consisting of Ground Floor, First Floor and Second Floor was owned by Late Smt. Vidya Devi Meena i.e. mother-in-law of plaintiff no. 1. It is averred that husband of plaintiff no. 1 namely, Late Sh. Bhagwant Singh Meena died on 08.02.2022 and prior to his death, both the plaintiffs were residing at

Contd....2

:2:

CS DJ No:- 165/23

**DEEPIKA MEENA AND ANR Vs. UMESH SINGH MEENA
AND ANR**

the suit property. It is further averred that on 20.01.2023 Smt. Vidya Devi Meena also died under suspicious circumstances and got cremated by the defendants without informing anyone in the family. It is claimed that plaintiffs no. 1 and 2 are entitled to 50% share of suit property, however, defendants in collusion with each other are reluctant to carry out partition of suit property and to give rightful share of the property in question to the plaintiffs. It is averred that original documents of the suit property are lying with defendants and they are trying to create third party interest in respect of the suit property, as such, status quo qua property in question be maintained.

Present application is strongly opposed on behalf defendants on the ground that the plaintiffs are residing separately from the family of defendants for past more than 7 years. While admitting the fact that suit property was owned by mother of defendant no. 1 namely, Late Smt. Vidya Devi Meena, it is averred that she executed a Will qua suit property, however, contents of the same are not known to the defendants at this stage. It is thus, prayed that some time be given to defendants to file written statement along with documents including Will in question. It is further submitted on behalf of defendants that they are in possession of suit property and in all fairness have no intention to sell/ mortgage or create any third party interest in respect of the suit property.

Arguments heard. Record perused.

In the case of *Dorab Cawasji Warden v. Coomi Sorab Warden & Ors.*, 1990 AIR 867, Hon'ble Supreme Court of India was pleased to hold as under:-

Contd.....3

CS DJ No:- 165/23

**DEEPIKA MEENA AND ANR Vs. UMESH SINGH MEENA
AND ANR**

“.... The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.*
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.*
- (3) The balance of convenience is in favour of the one seeking such relief.....”*

Suffice it to say, factum of suit property being in possession of defendants is not in dispute. Moreover, the fact that suit property was earlier owned by Late Smt. Vidya Devi is also not in contention. Now, plaintiffs claim 50% share of the suit property in terms of Section 15(1)(a) of Hindu Succession Act which provides that property of a female Hindu dying intestate would devolve upon her sons and daughters (including children of any predeceased son or daughter) and the husband. Defendants on the other hand claimed that Late Smt. Vidya Devi Meena did not die intestate but executed a Will which needs to be examined.

Contd....4

:4:

**CS DJ No:- 165/23
DEEPIKA MEENA AND ANR Vs. UMESH SINGH MEENA
AND ANR**

Be that as it may, in the absence of production of original Will in question, prima-facie case for grant of injunction is made out in favour of plaintiffs and against the defendants. In view of submissions made on behalf of defendants that they have otherwise no intention to create any third party interest in respect of suit property, balance of convenience lies in favour of plaintiffs and against defendants. Moreover, irreparable loss is likely to cause to plaintiffs if the relief sought under present application is not granted in respect of suit property. **Application under Order XXXIX Rule 1 and 2 CPC is thus, disposed of as allowed** and defendants are directed to not create any third party interest in respect of suit property during pendency of the present suit. It is made clear that nothing mentioned herein shall tantamount to an expression on the merits of the case.

Put up on date fixed i.e. **25.07.2023**.

**(Akash Jain)
ADJ-1 (South-East), Saket Court
New Delhi/04.05.2023**