

CS no. 1731/2016

Smt. Krishna Devi and anr. V/s. Sh. Bijender Pal

26/10/2016

Pr.:- Sh. Ravi, proxy counsel for plaintiffs with plaintiff no. 2.
Defendant with counsel Sh. Hitesh Bhardwaj.

I have heard the submissions of Ld. counsel for parties on plaintiff's application under Order XXXIX Rule 1 & 2 CPC and perused the case file.

Order on application

under Order XXXIX Rule 1 & 2 CPC of plaintiff

The facts set up by the plaintiffs in their plaint are that plaintiff no. 1 is mother of plaintiff no. 2 and they are residing in property bearing no. F-133, Jagatpuri, Delhi-110051 for last more than 35-40 years. Plaintiffs alleged that the sole owner of aforesaid property i.e. Smt. Bhu Devi, the mother-in-law of plaintiff no. 1 and grandmother of plaintiff no. 2 due to love and affection gifted the aforesaid property to them by executing a registered Gift Deed dated 02/03/2015 in their favour so they both became owner of aforesaid property. Plaintiffs alleged that defendant no. 1 who is brother-in-law of plaintiff no. 1 and uncle of plaintiff no. 2 is living in one

room and kitchen on second floor of the aforesaid property (herein after referred as 'suit property') on licence basis. Plaintiffs claimed that inspite of their various request and termination of licence of the defendant to reside in the suit property, defendant has failed to vacate the suit property. Accordingly, plaintiffs filed instant suit for recovery of possession of suit property, permanent injunction as well as for damages.

Plaintiffs alongwith their suit have filed the aforesaid I.A praying for restraining defendant to create third party interest or part with possession in respect of suit property till disposal of the suit.

Defendant contested the suit by filing written statement stating therein that the alleged gift deed dated 02/03/2015 whereupon plaintiffs are relying on is not legally valid document as the executant late Smt. Bhu Devi was not in full state of mind as she was suffering from several old age ailments. Further defendant alleged that late Smt. Bhu Devi asked all her sons as well as plaintiffs to cancel the gift deed soon after slight recovery from ailment but unfortunately she died on 19/11/2015. Further defendant claimed that plaintiffs have not come before court with clean hands as it was decided that defendant shall make a payment of Rs.15 lacs to the plaintiffs

so as to get the transfer documents of his share in his favour from the plaintiffs and in this process, he paid Rs.12 lacs in cash in three installments to the plaintiffs and he was also willing to pay rest of amount of Rs. Three lacs meanwhile, he was served with the notice of the instant suit. Accordingly, defendant prayed for dismissal of the suit.

Plaintiffs filed replication to the written statement of defendant wherein they denied the contents of written statement and reiterated the averments made in plaint.

During course of arguments, defendant stated he will not create any kind of third party interest or part with possession of the portion of the suit property in his possession till the disposal of the suit and he is ready to give statement to this effect.

Statement of defendant is recorded in regard to his aforesaid submission.

Ld. Counsel for plaintiff stated that the aforesaid application of plaintiffs be disposed off in term of statement of defendant recorded in court.

Statement of plaintiff no. 2 is recorded in regard to the aforesaid submission of his counsel.

In view of above and considering the facts and circumstances of the case and statement made by defendant and plaintiff no.2, the aforesaid application of plaintiffs is disposed off with following order:-

Order

The I.A filed by the plaintiffs under Order XXXIX Rule 1 & 2 CPC is allowed. Defendant is restrained to create third party interest or part with possession in the portion of suit property in his possession till the disposal of the suit.

Be put up for admission-denial of documents and framing of issues on **28/01/2017**.

(RAVINDER SINGH)
Addl. District Judge (Shahdara),
Karkardooma, Delhi. 26/10/2016.