

CS483/18
UMA DEVI Vs. HIRA LAL

04.04.2024

Present: Sh. Rishi Pal Singh, Id. Counsel for the plaintiff.
Sh. SKS Bhadanna , Id. Counsel for the defendant.

Matter is pending for arguments on the application under Order 12 rule 6 CPC.

Arguments heard from both the sides.

It is submitted by Ld. Counsel for the plaintiff submits that the father of defendant no. 1 i.e. late Sh. Panna Lal and executed one registered Will dated 17.10.1988 in favour of defendants no. 1 and 2 and the probate petition earlier filed on behalf of defendant no. 1 was dismissed due to technical grounds I.e on limitation therefore, the suit property is now to be divided equally between the parties and said registered Will cannot be looked into.

Ld. Counsel for the defendants no. 1 and 2 submits that the earlier proceedings initiated under probate petition were not dismissed on merits but on technical grounds of limitation which does not operate as res-judicata in the present matter. Further, it is submitted by Ld. Counsel for the defendants no. 1 and 2 that there is no mandation to seek probate of a registered Will in Delhi. Therefore, the said registered Will is still in force and the defendants no. 1 and 2 are entitled to the suit property as they are the absolute owners and in possession of the suit property.

In view of the above, I concur with the submission of Ld. Counsel for the defendants no. 1 and 2 and the veracity of

the Will in question shall be tested after the trial in the present suit.

Accordingly, the application under Order 12 Rule 6 CPC filed on behalf of the plaintiff is dismissed as not maintainable.

Pleading are complete.

From the pleadings of the parties, following issues are settled for settlement:-

1. Whether the plaintiff is entitled to seek the relief of partition for the suit property as claimed? OPP

2. Whether Plaintiff is entitled to permanent injunction as claimed? OPP

3. Relief ? OPP.

No other issues have arisen or pressed upon. List of witnesses be filed by the parties within 14 days from today with copies to each other. Affidavit in evidence of plaintiff's witnesses be filed within a week prior to next date of hearing with advance copy to the other side. Put up for PE on 24.07.2024.

**(Ankur Jain-II)
ADJ-02, SHD District
KKD/Delhi 04.04.2024**