

54 CS No. 2138/16

NEAL JAY WADHWA AND ORS. Vs. MOHINDER WADHWA AND ORS.

16.03.2022

Present : Smt. Pusshp Gupta, Advocate for the Plaintiff.
Defendants are exparte.

Case is listed today for further arguments on the application under Order 12 Rule 6 CPC.

Heard arguments and perused the record.

Facts necessary for disposal of the present application as per plaint are that late Sh. Jaswant Rai Wadhwa, grand father of the plaintiffs had two sons, namely, Sh. Vinod Kumar Wadhwa, father of the plaintiffs and Sh. Mohinder Wadhwa(defendant no.1). It is further averred that late Sh. Jaswant Rai Wadhwa during his lifetime had executed a Will dated 07.06.1995 whereby he bequeathed the property bearing no. 29 Vigyan Lok, Delhi-110092 (hereinafter referred to as the suit property) in the following terms:

(a) the sons of Sh. Jaswant Rai Wadhwa (Sh. Mohinder Wadhwa and Sh. Vinod Kumar Wadhwa) along with their wife were allowed to live in the suit property, however, they had no right to dispose of the same in any manner whatsoever &

(b) the plaintiffs being the children of Sh. Vinod Kumar Wadhwa are entitled to use the first floor of the suit property absolutely and defendant nos. 3 & 4 (children of defendant nos. 1 & 2) are entitled to use the ground floor of the suit property absolutely after death of their parents.

It is further stated that Sh. Jaswant Rai Wadhwa died on 3.05.1996 and Sh. Vinod Kumar Wadhwa, father of the plaintiffs, died on 11.03.2011. It is further stated that parents of the plaintiffs got divorced on 09.12.2010 by the Court of New Jersey, USA . It is further stated that the plaintiffs after demise of their father, requested the defendants to deliver the vacant and peaceful possession of first floor of the suit property but to no avail. Hence, the plaintiffs have filed the present suit for seeking decree of

declaration whereby declaring the plaintiffs as joint owner of first floor of the suit property, decree of possession and damages.

Written statement was filed on behalf of defendant nos. 1 & 2 wherein they stated that Sh. Jaswant Rai Wadhwa besides executing a Will dated 07.06.1995 had also executed supplementary Will dated 22.04.1996 wherein it is stated that after his death, Sh. Ved Prakash Wadhwa, Sh. Om Prakash Wadhwa, Sh. Chander Prakash Wadhwa and Smt. Pushpa Taneja(brothers and sisters of late Sh. Jaswant Rai Wadhwa) will have right to use and build structure on the roof of the suit property and in case of any dispute, decision of Sh. Ved Prakash Wadhwa and Sh. Om Prakash Wadhwa will be final. It is further averred that the aforesaid brothers and sisters of Sh. Jaswant Rai Wadhwa are necessary parties to the present suit as they are also owner of the suit property. The defendant nos. 1 & 2 admitted in para 4 of the written statement that the plaintiffs are grand children of Sh. Jaswant Rai Wadhwa and are legal owner of first floor of the suit property. However, they stated that they are not ready to hand over possession of first floor of the suit property to the attorney holder Sh. Surinder Nath Dhamija, who has filed the present suit on behalf of the plaintiffs.

Ld. Counsel for the plaintiffs submits that the plaintiffs have filed the application under Order 12 Rule 6 CPC for seeking possession of first floor of the suit property on the basis of admission made by defendant nos. 1 & 2 in para 3 and 4 of preliminary objections/submission and para 7, 11 & 14 of the written statement. She has also drawn attention of the Court to the order dated 20.03.2019 wherein it has been observed that the defendant no.1 made a submission that he along with the defendant no. 2 is ready to hand over the vacant and peaceful possession of the first floor of the property in question to the plaintiffs provided one of the plaintiffs appears in the court to receive the same.

Perusal of record shows that the defendants were proceeded exparte vide order dated 24.08.2021. Be that as it may, reply to the

aforesaid application has already been filed on behalf of defendant nos. 1 & 2 on 11.04.2017 wherein they stated that they have no objection to hand over possession of first floor of the suit property to the plaintiffs. It is further stated that they have constructed first floor of the suit property with their hard earned money and if the plaintiffs are ready to pay the amount spent on construction, they have no objection to hand over possession of first floor of the suit property.

It is apparent from the contents of para 4 of preliminary objections/submissions of the written statement and reply to the application under Order 12 Rule 6 CPC that the defendant nos. 1 & 2 have no objection in handing over possession of first floor of the suit property to the plaintiffs. Pertinently, they have admitted the execution of Will dated 07.06.1995 by Sh. Jaswant Rai Wadhwa but stated that Sh. Jaswant Rai Wadhwa has also executed supplementary Will dated 22.04.1996 whereby he has given right of use and construction over roof of the suit property to his brothers and sisters. However, there is no dispute in the present application with respect to roof of the suit property.

In view of unequivocal admission of the defendants, the plaintiffs are entitled to recover possession of first floor of the suit property from defendant nos. 1 & 2. Accordingly, suit is partly decreed in favour of the plaintiffs and against the defendants for relief of possession and the defendants are directed to deliver vacant and peaceful possession of first floor of the suit property i.e. H. No. 29, Vigyan Lok, Delhi-110092 to the plaintiffs. Part decree sheet be prepared accordingly. **Accordingly, application under Order 12 Rule 6 CPC stands disposed of.**

Be put up exparte PE on **24.05.2022.**

(Manjusha Wadhwa)
Additional District Judge -02
Shahdara, Karkardooma Courts,
Delhi: 16.03.2022.