

14 CS 749/18

ROOP RANI Vs. KAJAL CHANDOK AND OTHERS

28.01.2025

At 3:08pm

Present: Sh. Inderjeet Singh, Ld. counsel for plaintiff no.2 to 4 and LR no.1(a), 1(b) and 1(c)(III) of plaintiffs along with plaintiff no.3 and LRs of plaintiff no.1 (plaintiff stated to be expired on 07.04.2024).
Sh. Vinod Malhotra, Ld. counsel for D-1 to D-3 through VC.
D-2 in person.
Sh. O.P. Aggarwal, Ld counsel for D-4 (a) to (c) {LRs of plaintiff no.1(c) (I), (II) and (IV)} through VC.

Arguments heard on the application under Order XIV Rule 5 r/w Section 151 CPC.

It has been argued by Ld. counsel for D-1 to D-3 that the registered Will dated 21.04.2017 is a forged document and late Smt. Roop Rani has never executed the alleged Will, during her lifetime. It is further submitted that plaintiff has not pleaded the existence of the Will in the plaint, therefore, without pleading no issues under Order XIV Rule 5 CPC can be framed. It is further submitted that the application deserved to be dismissed.

Ld. counsel for D-4(a) to (c) {LRs of plaintiff no.1(c) (I), (II) and (IV)}, on instructions submits that D-4(a) to (c) {LRs of plaintiff no.1(c) (I), (II) and (IV)} dispute the

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genuineness of the Will, however, he has no objection, if additional issues qua Will be framed in the present suit.

Ld. counsel for plaintiff submits that plaintiff no.1 was the grandmother of D-2 and D-3 and mother-in-law of D-1. Plaintiff no.1 along with plaintiff no.2 to 4 have filed the present suit against D-1 to D-3 seeking their eviction from the suit property. It is further submitted that the evidence of both the parties were concluded and the final arguments were also heard at length by this Court, however, the matter was not reserved for pronouncement of judgment and during this period, unfortunately, plaintiff no.1 had expired on 07.04.2024. It is further submitted that during her lifetime, Smt. Roop Rani had executed a registered Will dated 21.04.2017 thereby bequeathing her share in the suit property in favour of Vijay Kumar and Anil Chandok. It is further submitted that plaintiffs have no objection, if the matter be posted for final arguments but as the defendants have disputed the genuineness of the Will then it would be necessary to frame an additional issue to settle and adjudicate all the disputes between the parties.

It is not in dispute that plaintiff no.1 is the sister-in-law (bhabhi) of plaintiff no.2 to 4 and grandmother of D-2 and D-3 and mother-in-law of D-1. It is also not dispute that the plaintiff no.1 purchased the entire suit property from previous owner Sardar Chanan Singh and Sardar Harnam Singh vide sale deed dated 16.12.1957 (registered as document no.5778, book no.1, vol. no.3089 on pages no.161 to 162, registered in the office of Sub-registrar Kashmiri Gate, Delhi on 04.01.1958). It is

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further pleaded in the plaint that on 21.02.1964, plaintiff no.1 sold undivided 3/4th portions of the suit property to plaintiff no.2 to 4 vide registered sale deed dated 21.02.1964 (registered vide document no.2268, additional book no.1, vol. no.1062 on pages no.62 and 63, in the office of Sub Registrar Delhi on dated 05.03.1964). Admittedly, by virtue of the above sale deeds, plaintiffs no.1 to 4 are the owners of the suit property.

The plaintiffs jointly had filed the present suit seeking the relief of possession, permanent injunction and recovery of damages amounting to Rs.5,40,000/- and mesne profit/damages against D-1 to D-3 in respect to part of the suit property bearing no.X-16 (Old No.C-26), X-Block, Naveen Shahdara, Kuldeep Nagar, Delhi-32 specifically mentioned in Red and Yellow Colour in the site plan attached with the plaint.

D-1 to D-3 have contested the present suit claiming that they are the owners of the portions occupied by them by way of adverse possession. It is also pleaded that one room at the back side occupied by D-1 to D-3 have been possessed by them being permissible users.

Perusal of the record shows that on 05.12.2023 DE was closed. Record further reveals that on 30.01.2024, 29.02.2024 and 26.03.2024, part final arguments were heard in the present matter, however, unfortunately, plaintiff no.1 had expired on 07.04.2024. LR of plaintiff no.1 namely Sh. Vijay Kumar and Sh. Anil Chandhok, propounded a registered Will dated 21.04.2017 executed by Smt. Roop Rani vide which the share of the plaintiff no.1 in the suit property has been

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bequeathed in favour of Sh. Vijay Kumar and Sh. Anil Chandhok. Vide order dated 23.07.2024, the application under Order XXII Rule 3 CPC was allowed and the LRs of plaintiff no.1 were brought on record. Sh. Vijay Kumar, Sh. Anil Chandhok and Ms. Preeti Malhotra were substituted on behalf of plaintiff no.1 and the other LRs of plaintiff no.1 namely Sh. Surender Kapoor, Ms. Ritu Malhotra and Sh. Tarun Kapoor, who have disputed the genuineness of the Will dated 21.04.2017 were substituted and added as D-4(a) to (c).

D-1 to D-3 in their reply to the application under Order XXII Rule 3 CPC have disputed the genuineness of the Will dated 21.04.2017.

Admittedly, D-1 to D-3 are also the LRs of plaintiff no.1 and if Smt. Roop Rani would have died intestate then D-1 to D-3 along with D-4(a) to (c) shall be having a right/undivided share in the suit property being the 1st class legal heirs of plaintiff no.1 and by subsequent event i.e. death of plaintiff no.1, the cause of action for filing the present suit would have disappeared/diminished and have become non-existent because a right in the property would have also accrued in favour of D-1 to D-3. However, Sh. Vijay Kumar and Sh. Anil Chandhok have propounded a registered Will dated 21.04.2017 executed by plaintiff no.1 vide which the share of plaintiff no.1 has been bequeathed in their favour. The said Will has been filed along with application under Order XXII Rule 3 CPC. This Court has allowed Sh. Vijay Kumar, Sh. Anil Chandhok and Ms. Preeti Malhotra to contest the present suit against D-1 to D-3.

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If the Will dated 21.04.2017 is a last and genuine Will of Smt. Roop Rani then in that scenario her share has been bequeathed in favour of Sh. Vijay Kumar and Sh. Anil Chandhok and by virtue of said Will, they have become the owners of the share of plaintiff no.1 in the suit property and have all the rights, interests and claims against all other legal heirs of plaintiff no.1. Certainly, they would also have a right to claim possession of the portions occupied by D-1 to D-3 being the co-owners of the suit property.

Considering the factual matrix of the present case and considering that the evidence in the present matter has already been concluded, however, before the present matter is to be reserved for pronouncement of judgment, plaintiff no.1 had expired and Sh. Vijay Kumar and Sh. Anil Chandhok, LRs of plaintiff no.1 claimed that plaintiff no.1 had expired leaving a registered Will in their favour qua her share in the suit property, this Court is of the view that the Will dated 21.04.2017 is required to be proved in accordance with law to adjudicate and decide all the questions involved in the present matter.

In view of the above observations, this Court allows the application under Order XIV Rule 5 r/w Section 151 CPC filed by the plaintiffs and framed the following issues which is as under:-

- 1. Whether the Will dated 21.04.2017 is a last and genuine of Will of late Sh. Roop Rani? If yes, then what would be its effect?***
OPPs

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It is made clear that parties shall lead their respective evidences only pertaining to the above mentioned additional issue framed.

Application under Order XIV Rule 5 r/w Section 151 CPC is accordingly disposed of.

Plaintiffs are directed to file additional evidence affidavit within 15 days from today with an advance copy to defendants.

Put up for PE on **04.03.2025**.

Date is given as per the convenience of Ld. counsels.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
28.01.2025