

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS, DELHI**

CS No.683/19

In the matter of:-

Sh. Harish Chand Gupta

.....Plaintiff

Vs.

Smt. Pushpa Gupta & Ors.

.....Defendants

19.09.2023

ORDER

Vide this order, I shall dispose off the application filed by the defendant no.1 under Order VIII Rule 1 (A) (3) read with Section 151 CPC.

Brief facts as mentioned by the defendant no.1 in the present application are, that the plaintiff in his plaint has sought the partition of the two properties i.e. E-5, Krishna Nagar, Delhi-51 and one shop situated at A-5/1, Ground Floor, Krishna Nagar, Delhi-51 and the defendants in their joint written statement mentioned the status of both the properties in para no.3 of reply on merits stating that the property bearing no.E-5, Krishna Nagar, Delhi-51 was bequeathed in favour of the defendant no.1 by virtue of a registered Will and the shop situated at A-5/1, Ground Floor, Krishna Nagar, Delhi-51 was bequeathed in favour of the defendant no.3 by virtue of registered Will executed by Sh. Lakshmi Chand Gupta. It is further averred that the defendants filed the copy of the Will executed by Sh. Lakshmi Chand Gupta pertaining to the property bearing no. E-5, Krishna Nagar, Delhi-51, but could not file the Will of Sh. Lakshmi Chand Gupta pertaining to the shop situated at A-5/1, Ground Floor, Krishna

Nagar, Delhi-51 in favour of the defendant no.3 as the same was not traceable at the time of filing of the written statement. It is further averred that the defendant no.1 is aged about 74 years and at the time of filing of the written statement, defendant no.1 could not recall about the placement of the Will of Shop situated at A-5/1, Ground Floor, Krishna Nagar, Delhi-51. It is further averred that the defendant no.1 has now found the original Will of Sh. Lakshmi Chand Gupta pertaining to the aforesaid shop in favour of the defendant no.3 and defendant no.1 craves leave of this court for filing the aforesaid Will dated 30.10.2009 on record. It is further averred that the present suit is still at a preliminary stage and no prejudice would be caused to the contesting parties, if the said Will is taken on record. Hence, it is requested to allow the present application, in the interest of justice.

Plaintiff has contested the present application by filing his reply stating therein that the application of the defendant no.1 is not maintainable and liable to be dismissed as the copy of alleged Will which the defendant no.1 sought to place on record has still not been filed by the defendant no.1. It is further stated that the defendants have alleged in their written statement about two alleged Wills, out of which copy of one alleged Will in respect of house has already been filed by the defendants but the copy of alleged Will in respect of shop has not been filed by the defendants so far and in fact, the copy of alleged Will in respect of house has been filed by the defendant no.1 alongwith the application. It is further stated that the present application has been filed by the defendant no.1 just to linger on the matter and nothing else, hence it is requested to dismiss the application of the defendant no.1 with heavy costs.

Both the parties have also filed their respective written arguments on this application.

I have gone through the written submissions filed on behalf of the parties.

I have given consideration to the submissions made by the ld. counsels for the parties and perused the record.

Record perused. Perusal of record the reveals that matter is at the preliminary stage and trial has not yet begun and it would always be in the interest of justice if the matter is decided on merits instead of technicalities. The defendants have pleaded about the said Will in their joint written statement. This court is of the considered view that if the present application is not allowed, then the defendant no.1 shall suffer irreparable loss and injury which cannot be compensated in any manner and on the other hand, no serious prejudice would be caused to the plaintiff if the present application is allowed, as the document sought to be placed on record would help the court in deciding the real controversy between the parties.

Therefore, in view of forgoing discussion, the application of the defendant no.1 under Order VIII Rule 1 (A) (3) read with Section 151 CPC is hereby allowed and documents sought to be placed on record are taken on record.

Application stands disposed off.

(Typed to the dictation directly, corrected and pronounced in open court on 19.09.2023).

**(RAMESH KUMAR-II)
ADDL. DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI**