

CS 729/23
MALTI AND ANR Vs. SAGAR AND ORS

04.07.2024
AT 11:25 AM

Present: Sh. Vishnu Dutt Sharma, Ld. Counsel for the
plaintiffs through VC.
Plaintiff no.1 in person.
Sh. Tarun Chikara, Ld. Proxy Counsel for Sh.
Rajbeer Singh Sagar, Ld. Counsel for D-1 to D-3
along with defendants No.1 and 2 in person.

Affidavits of admission and denial of documents on
behalf of plaintiff No.1 and proposed issues filed on 06.06.2024.
Copy already been supplied.

Affidavits of admission and denial of documents on
behalf of D-1 to D-3 filed on 26.04.2024. Copy already been
supplied.

Ld. Counsel for plaintiffs submits that plaintiffs have
already deposited the costs of Rs.1,000/- and he will file the
receipt of the same within two days.

Ld. Proxy Counsel for defendants submits that
defendants shall deposit the costs imposed vide order dated
28.03.2024 during the course of the day and shall file the receipt
of the same on the next date of hearing.

Let costs be deposited during the course of the day
and receipt be filed on or before the next date of hearing.

Plaintiffs as well as defendants have denied all the documents of each other in their affidavits of admission and denial of documents.

At this stage, Ld. Proxy Counsel for defendants submits that the present suit is bad for misjoinder of parties because D-3 who is the husband of D-2 has been made party in the partition suit filed by the plaintiff. He further submits that during the life time of D-2, D-3 has no right in the suit properties. He further submits D-3 has no concern with the suit properties and also with the present suit.

Ld. Counsel for plaintiffs on instructions submits that plaintiffs have no objection, if D-3 be deleted from the array of parties.

In view of the submissions of Ld. Proxy Counsel for defendants, no objection given by Ld. Counsel for plaintiffs and considering the facts and circumstances of the case, D-3 is hereby deleted from the array of parties of the present suit in view of the provision of Order I Rule 10(2) CPC.

Plaintiffs are directed to file the amended memo of parties on or before the next date of hearing.

At this stage, Ld. Counsel press his application under Order XXXIX Rule 1 and 2 CPC. He further submits that plaintiffs have great apprehension that defendants may dispose off the suit properties in order to curtail the rights of the plaintiffs.

Ld. Proxy Counsel for defendants on instructions submits that defendants have no intention to sell, alienate or dispose off the suit properties.

Separate statements of defendants No.1 and 2 recorded.

In view of the contentions made in the application, submissions made by the Ld. Counsel and considering the statements of the defendants and facts and circumstances of the case, defendants are hereby restrained from selling, alienating or creating third party right or interest in the suit properties during the pendency of the present suit.

Application under Order XXXIX Rule 1 and 2 CPC is accordingly disposed off.

It is jointly submitted that pleadings of the present suit have already been completed and it has been further requested that issues be framed in the present suit.

Pleadings of the parties are completed. From the pleadings of the parties, following issues are framed :

1. Whether the plaintiffs are entitled for the preliminary decree and final decree of partition against the defendants in respect to suit properties, as prayed? OPP
2. Whether the plaintiffs are entitled for permanent injunction against the defendants in respect to the suit properties, as prayed? OPP
3. Whether the will dated 08.03.2022 is a valid, genuine and last will of Smt. Bimla Devi in respect to suit property No.2, as claimed, if so, what is its effect? OPDs

4. Whether the will dated 01.02.2023 is a valid, genuine and last will of Smt. Bimla Devi in respect to suit property No.1, as claimed, if so, what is its effect? OPDs
5. Relief.

No other issue arises or is pressed by the parties, at this stage. The parties are directed to file list of witnesses within 15 days from today.

The plaintiff is directed to file evidence by way of affidavit of the plaintiff's witnesses within 30 days, with an advance copy to the opposite side, at least seven days prior to the next date of hearing.

Put up for P.E. on 19.09.2024.

Date is given as per the convenience of the parties.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
04.07.2024