

CS No. 228/19

Sheela

Vs.

Satish Kumar And Ors.

27.05.2023

Present : Sh. R S Verma, counsel for plaintiff.

Sh. Faiyaz Hasan, counsel for defendants nos.1 to 9
through VC.

Sh. M K Arora, counsel for defendant with defendant
no.10.

Three applications have been moved by counsel for the plaintiff. First application is for correction in the deposition dated 04.06.2022 and in the affidavit of PW-1. It is submitted that on 04.06.2022 while deposing, the plaintiff stated the date of 04.07.2011 when he came into possession while the same has been wrongly typed as 07.04.2011. The application is not opposed by counsel for defendants, hence the same is allowed.

Date of possession and gift deed be read as 04.07.2011 wherever the date of possession and gift deed is mentioned as 07.04.2011. First application is accordingly disposed of.

Second application has been filed by the plaintiff for issuance of direction to defendants nos.1 to 9 for not putting any hindrance in removal of the fallen tree in the suit property. It is submitted that there used to be a big tree in the suit property which fell down in 2018 and is lying across the gate of the suit property. The plaintiff apprehends that the big fallen tree can

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damage the gate and wall of the suit property and can also be harmful for life and property of the plaintiff and others. Hence, the plaintiff has prayed that the court may permit him to remove the said tree at his own cost.

Reply has been filed by the defendants wherein it is submitted that the said application should be dismissed as the cause of action arose in 2018 and the plaintiff never took any step in all these years hence, there is no apprehension of any damage to the plaintiff his property and the present application has been moved only to delay the trial and to cause harassment to the defendants. It is also prayed by the defendants if the said tree is removed it may lead to falling of the entire structure which are the two rooms in the possession of defendants. Needless to say that cost of removal of tree shall be borne by the plaintiff.

Arguments heard and record is perused.

The court is of the opinion that to avoid any further damage to the property, the fallen tree should be removed, however to avoid any further dispute or altercations, it is necessary that Local Commissioner is appointed in whose presence, the said removal can be done.

I therefore appoint Sh. Akshay Sharma, Advocate, Mob. No. 9654975748 & 7827868640, email sharmaakshay.2017llb@gmail.com., 377, Lawyers Block-II, Delhi High Court, Delhi-110031, and F-425, Karkardooma

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Court, Delhi-32, to visit the property on date fixed with the consent of both the parties by the Local Commissioner for removal of the fallen tree and also to record the entire proceedings. The removal of the tree shall be done in the presence of the Local Commissioner. Photographs of the damage property, if any, be also taken by the Local Commissioner. Fee of the Local Commissioner is fixed at Rs.15,000/-, which shall be equally shared by both the parties.

It is further directed that any damage to the property, which is the disputed area, during the removal of the tree shall be borne by both the plaintiff and defendant equally.

Put up for report of the Local Commissioner, arguments on application under Order 39 Rule 2A CPC and cross-examination of PW on 02.09.2023.

(Purva Sareen),
ADJ-01, South District,
Saket Court/ND/27.05.2023