

IN THE COURT OF SH. TARUN YOGESH
ADDL. DISTRICT JUDGE:03:
SOUTH WEST DISTRICT: DWARKA COURTS:NEW DELHI

CS No. 960/17

Sh. Murli Manohar

..... Plaintiff

Vs.

Sh. Madan Lal & Ors.

.....Defendant

ORDER

1. This order will dispose of plaintiff's application under Order XXXIX Rules 1 and 2 read with Section 151 CPC for restraining defendants, their agents, etc. from selling, alienating or disposing of property bearing No. S/21 (WZ-21), measuring 70 sq. yards situated in khasra Rect. No. 21, Killa No. 13, Village Dabri known as Vashisht Park, Pankha Road, New Delhi (***hereinafter referred as suit property***) forming part of total land measuring 110 sq. yds. till disposal of the suit.

2. Plaintiff Sh. Murli Manohar has filed suit for partition and declaration asserting himself as owner of 25 sq. yards of land in the suit property and for partition of respective shares of plaintiff and defendants by metes and bounds.

3. As stated in the plaint, plaintiff and defendants are siblings being sons and daughters of late Mahabir Santoshi who had purchased suit property bearing No. S/21, (WZ-21) measuring 110 sq. yds. from

Sh. Hira Singh through registered sale deed dated 29.07.1966. Late Mahabir Santoshi died intestate on 24.12.1984 leaving behind his widow, four sons and two daughters who inherited $1/7^{\text{th}}$ share each measuring around 16 sq. yards in aforesaid property and defendants No. 1 to 5 having relinquished their shares in favour of Smt. Mantya Devi by way of registered relinquishment deed dated 04.06.1993 are stated to be left with no right and share in the property till the death of their mother Smt. Mantya Devi on 28.03.2015.

3.1 Plaintiff continued as owner of $1/7^{\text{th}}$ share in the property whereas his mother Smt. Mantya Devi (now deceased) being owner of remaining $6/7^{\text{th}}$ share executed registered GPA and Will in respect of 40 sq. yards of aforesaid property from the south side in his favour which registered documents were duly attested by defendant No. 1 as witness being the eldest brother in the family.

3.2 Plaintiff, in addition, has also stated about false proceedings initiated by defendants No. 1 and 2 by obtaining signatures of their mother before her death on 28.03.2015 and claims to have inherited $1/6^{\text{th}}$ share each along with defendants in the remaining 54 sq. yards of land after death of their mother Smt. Mantya Devi for insisting his total share measuring 25 sq. yards which includes 16 sq. yards as $1/7^{\text{th}}$ share in the property of late Mahavir Santoshi and 9 sq. yards as $1/6^{\text{th}}$ share in the property of late Mantya Devi.

3.3 Defendants, particularly defendants No.1 to 3, being brothers are alleged to be disputing his share and planning to sell out the property to third persons with intention to deprive him of his legitimate share in the

property left by his parents.

3.4 Legal notice dated 03.08.2017 was served upon defendants through his counsel for partition and giving his legitimate share in the property but in vain and plaintiff has thereafter filed suit declaring him owner of 25 sq. yards of land in the property and partition of their respective shares in the suit property by metes and bounds.

4. Defendants No.1, 2 & 3, upon service of summons, have contested plaintiff's suit as gross misuse of process of law which has been filed intentionally and deliberately with malafide intention to harass, humiliate and blackmail them and is liable to be dismissed with exemplary cost.

4.1 Plaintiff's suit has been opposed on the ground of concealment of true and material facts by insisting about registered Will dated 10.02.2014 executed by Smt. Mantya Devi in favour of defendant No.1, a copy of which was supplied to plaintiff along with application under Order XVIII Rule 17 CPC filed in the earlier suit pending in the court. Further, it is also averred by defendants that plaintiff is relying upon registered relinquishment deed dated 04.06.1993 executed by LRs of late Mahabir Santoshi in favour of their mother Smt. Mantya Devi wherein plaintiff's name is not mentioned as legal heir of late Mahabir Santoshi for insisting that plaintiff was properly given in adoption in the family of late Sh. Amrit Lal and late Smt. Sunder Devi which adoption was never challenged and plaintiff after availing benefits of movable and immovable properties of his adopted father, including government job has filed present suit without challenging execution of relinquishment

deed for seeking dismissal of suit with cost.

4.2 Defendants, in addition, have also opposed plaintiff's suit on the ground that defendants along with their mother late Mantya Devi have filed suit for declaration, possession and permanent injunction titled "*Mantya Devi (through legal heirs) Vs. Murli Manohar & Anr.*" bearing CS No. 516535/2016 for declaring alleged GPA and Will in respect of 40 sq. yards of the property as null and void which was got executed and registered fraudulently and present suit has been filed thereafter with ulterior motive and malafide intention by concealing true and material facts averred by defendants in sub paras A to V of para No. 5 of their preliminary objections. Plaintiff's averments in the plaint have also been disputed by defendants in corresponding paras of reply on merits for seeking dismissal of suit with costs.

5. Advocate Sh. Sundaram for plaintiff and Advocate Sh. Lal Singh Thakur and Sh. Sudhir Tewatia for defendants No. 1 and 2 have addressed their submissions on last date of hearing.

6. I have carefully perused the pleadings and considered their submissions. It is the admitted case of plaintiff that earlier suit for possession, declaration and permanent injunction has been filed for cancellation of registered GPA and Will dated 09.10.1996, possession of area measuring 40 sq. yards of the property and restraining defendant (plaintiff herein) from creating third party interest wherein evidence has been led and submissions have been addressed by their counsels.

7. It is apt to note that dispute between siblings with respect to aforesaid GPA and Will is the subject matter of the earlier suit whereas

present suit has been filed by plaintiff asserting himself as owner of 25 sq. yds. of land by insisting 1/7th share in the property of his biological father and 1/6th share in the property of his biological mother which is being disputed by defendants on the ground that plaintiff was given in adoption.

8. The primary purpose and object of order granting interim relief is to evolve a workable formula to the extent called for by the demands of the situation keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests, i.e., injury and prejudice likely to be caused to the plaintiff if the relief is refused and injury and prejudice likely to be caused to the defendant if the relief is granted. The need for such protection is therefore to be judged against the corresponding need of the defendant to be protected against injury resulting from exercising his own legal rights. The court must weigh one need against another and determine where the balance of convenience lies and may pass an appropriate order which discretion should be exercised reasonably, judiciously and on sound legal principles.

9. It is well settled principle of law that power to grant temporary injunction is at the discretion of the court which is to be exercised reasonably, judiciously and on sound legal principles after recording satisfaction about following factors :-

- (i) Whether the plaintiff has a prima facie case ?*
- (ii) Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is not granted ?*

(iii) Whether the balance of convenience is in favour of the plaintiff?

10. These three rules are described as three pillars upon which the foundation of every order of injunction rests and are also known as triple test for grant of interim injunction.

11. Hon'ble Supreme Court of India in case titled "**Martin Burn Ltd. vs. R. N. Banerjee**" AIR 1958 SC 79 has explained the ambit and scope of the connotation "prima facie" case in following words:

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

12. Since plaintiff's suit has been filed for declaring him owner of 25 sq. yards of land and partition of their respective shares in the suit property by metes and bounds on the basis of inheritance which is being opposed by defendants on the ground that plaintiff was given in adoption and by referring to earlier suit for declaration, possession and permanent injunction disputing registered GPA and Will dated 09.10.1996 executed by Smt. Mantya Devi so prima facie dispute has been raised which requires trial by leading evidence.

13. The other two conditions of balance of convenience and irreparable injury also lies in plaintiff's favour as no inconvenience or hardship is likely to be caused to defendants by restraining them from creating any third party interest in the suit property till disposal of the suit.

14. **Plaintiff's application under Order XXXIX Rules 1 & 2 CPC is therefore allowed and defendants, their agents, etc. are restrained from from selling, alienating or disposing of suit property bearing No. S/21 (WZ-21), measuring 70 sq. yards situated in khasra Rect. No. 21, Killa No. 13, Village Dabri known as Vashisht Park, Pankha Road, New Delhi till disposal of the suit.**

15. Nothing stated herein shall tantamount to expression of opinion on the merits of case.

**Announced in the open Court
on 22.02.2019**

**(Tarun Yogesh)
ADJ-03/South West
Dwarka / New Delhi**