

18 CS DJ ADJ 296/23 UMRAWATI DEVI Vs. KAMESHWAR SAH AND
OTHERS

23.11.2023

Regular steno is on leave and no substituted steno is available.

Present: Sh. S P Sagar, Ld. Counsel for plaintiff.

Son of defendant no. 1.

Sh. Manoj Kumar, Ld. Counsel for defendant no. 2.

None for defendant no. 3.

Mediation report received with the remark 'unsettled'.

At this stage, Ld. Counsel for plaintiff submits that his application under Order XXXIX Rule 1 and 2 CPC is pending for disposal.

Submissions heard on behalf of both parties.

Briefly stated, present suit is filed for partition, possession and permanent injunction for the scheduled properties as mentioned in para 3 of the plaint i.e.

(a) property No. C-120, (old No. 32) comprised in Khasra No. 117/10, Gali no. 37, Mahavir Enclave Part III, New Delhi, measuring 100 sq. yds. in his own name (wherein the defendant no. 1 is residing at ground floor, defendant no. 3 is residing at first floor and defendant no. 2 is residing at second floor) (value Rs. 39,00,000/-);

(b) property No. C-118, (old No. 32) comprised in Khasra No. 117/10, Gali no. 37, Mahavir Enclave Part III, New Delhi, measuring 100 sq. yds. in his wife i.e. mother of parties, (value Rs. 39,00,000/-);

(c) *property No. A-19, 25 Foota Road, Sainik Enclave, Mohan Garden, Uttam Nagar, New Delhi measuring 200 sq. yds. (value Rs. 78,00,000/-) in his own name.” (hereinafter referred to as the “Scheduled Properties”).*

It is averred that scheduled properties were purchased in the name of late father and mother of the parties to the suit. It is further stated that plaintiff is sister and defendants are brothers. It is averred that plaintiff is entitled for 1/4th share in the scheduled properties and defendants may be restrained to create third party right during the pendency of the present suit.

Per contra, in its WS defendant no. 1 admitted the claim of plaintiff and give no objection if he scheduled is partitioned by metes and bounds between the parties. However, defendant no. 2 objected the claim of plaintiff on the ground of improper valuation of the suit properties and limitation. It is further stated that present suit is collusive suit between the plaintiff and defendant no. 1.

Considering the facts and circumstances of the present case, this court is of the considered opinion that all three ingredients i.e. *prima facie case, balance of convenience and irreparable loss* i.e. required for the purpose of interim injunction are satisfied. **Accordingly, application under Order XXXIX Rule 1 and 2 CPC is disposed off. Defendants are restrained to create third party right or part with possession of the scheduled properties as already mentioned above, during the pendency of present suit.**

Ld. Counsel for plaintiff submits that, his application u/o VIII Rule 10 CPC is also pending for disposal. Perusal of the record reveals that, defendant no. 3 was served on 20.04.2023 but has not filed WS till date.

Accordingly, his right to file WS is closed and defendant no. 3 is proceeded ex-parte. Accordingly, application u/o VIII Rule 10 CPC is disposed off.

At this stage, Ld. Counsel for defendant no. 2 sought some time to file reply to pending application u/o XII Rule 6 CPC. Let the same be filed within four weeks from today with advance copy to the opposite side.

Put up for arguments on pending application u/o XII Rule 6 CPC for **12.02.2024**.

(SHILPI M JAIN)
ADJ-05 (SW)/Dwarka Courts
New Delhi: 23.11.2023