

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

CS No. 489/18

Sh. Om Prakash Gupta

... Plaintiff

Versus

Sh. Radhey Shyam & Ors.

... Defendants

ORDER

1. This order shall dispose of plaintiff's application under Order VI Rule 17 and Order I Rule 10 read with Section 151 CPC filed in the Hon'ble High Court of Delhi on 19.09.2011 for permission to amend the plaint and for impleading Sh. Sachin S/o Sh. Radhey Shyam and Sh. Ravinder Kumar S/o Sh. Sheo Pal as defendants No. 9 and 10.

2. Brief facts set out in the plaint are as under:

2.1 Plaintiff Sh. Om Prakash Gupta has filed suit for declaration, partition, mandatory and permanent injunction by impleading his brothers Sh. Radhey Shyam and Sh. Krishan Kumar as defendants No. 1 and 2; mother Smt. Ram Murti Devi as defendant No.3; sisters Smt. Sunil Aggarwal, Smt. Saroj and Smt. Nirmala as defendants No. 4 to 6 and Sh. Sumer Singh and Sh. Subhash (vendees of Shop No.2 and Shop No.3) as defendants No. 7 and 8.

2.2 As averred in the plaint, late Sh. Gobind Ram (predecessor-in-

interest) of plaintiff and defendants No. 1 to 6 being owner of four shops situated in property No.44, khasra No.53 had sold one of the shops by virtue of two sale deeds dated 06.05.1988 in favour of Sh. Shyam Lal and another person and plaintiff after the death of his father had been carrying his business in three shops bearing private No. 2, 3 and 4 shown in red colour in the site-plan.

2.3 It is averred that keys of the shops were given to defendant No.2 Sh. Krishan Kumar for carrying business of General Merchant/Kiryana Store after he requested plaintiff in the year 2006-07 for giving him the shops for carrying his business. Plaintiff, however, upon visiting the shops on or about 18.10.2010 was surprised to find them closed and upon inquiry came to know about (i) sale deed dated 12.10.2010 in respect of Shop No.3 executed by defendant No.1 Sh. Radhey Shyam in favour of defendant No.7 Sh. Sumer Singh and (ii) sale deed dated 12.10.2010 in respect of Shop No.2 executed by defendant No.2 Sh. Krishan Kumar in favour of defendant No.8 Sh. Subhash.

2.4 It is averred that late Sh. Govind Ram had died intestate without executing alleged Will dated 14.02.1991 which has been mentioned in alleged sale deeds dated 12.10.2010 and plaintiff and defendants No.1 to 6 being Class I heirs are entitled to 1/7th share each in aforesaid shops in property No.44, khasra No.53, Gali Sunaran, Najafgarh, New Delhi.

2.5 Since defendants being greedy might complicate the matter by creating third party interest so plaintiff, left with no efficacious remedy, has filed suit for:

- (i) declaring alleged sale deeds dated 12.10.2010 in respect of Shop No.2 and Shop No.3 in favour of defendants No. 7 and 8 as null and void having no sanctity in the eyes of law;
- (ii) preliminary decree declaring plaintiff and defendants No. 1 to 6 entitled to 1/7th share each in the property of late Govind Ram;
- (iii) final decree of partition by demarcating and allocating specific shares;
- (iv) decree of permanent and mandatory injunction restraining defendants from interfering in his peaceful possession, use and enjoyment of plaintiff's share;
- (v) declaring alleged Will dated 14.02.1991 of Sh. Govind Ram as null and void for all intents and purpose;
- (vi) declaring any sale, alienation and creation of third party interest in any part of the suit property viz. three shops bearing No. 2 to 4 measuring 45 sq. yards in property No.44, khasra No.53, Gali Sunaran, Najafgarh, New Delhi as null and void for all intents and purpose along with cost of suit and such other order or relief as court may deem fit.

3. Defendants, pursuant to service of summons, have filed separate written statements.

4. Defendants No. 4 and 6 have supported plaintiff's case and prayer clause by submitting that plaintiff and defendants No. 1 to 6 being heirs of late Govind Ram are entitled to 1/7th share each in the suit property whereas defendants No. 7 and 8 have contested plaintiff's suit by

claiming themselves as bonafide purchaser of Shop No. 2 and 3 measuring 15 sq. yards each forming part of property No.44, Gali Sunaran, Najafgarh, New Delhi.

5. Defendants No. 1, 2 and 3 have filed joint written statement contesting plaintiff's suit and seeking its dismissal under Order VII Rule 11 CPC by mentioning about civil suit for permanent injunction filed by Sh. Govind Ram which was disposed of as settled on the basis of statement of plaintiff recorded on 02.06.1988 and by adverting to Will dated 14.02.1991 executed by late Govind Ram in favour of defendants No. 1 and 2. Plaintiff's suit, in addition, has been opposed as barred by limitation besides disputing plaintiff's averments in corresponding para of reply on merits.

6. Plaintiff's application under Order VI Rule 17 and Order I Rule 10 read with Section 151 CPC was filed along with amended plaint and amended memo of parties on 19.09.2011 which is pending for last 8 years wherein plaintiff has mentioned about another sale deed dated 12.10.2010 executed by Sh. Sachin (son of defendant No.1) and his mother Smt. Ram Murti Devi in favour of Sh. Ravinder Kumar S/o Sh. Sheo Pal for seeking permission to amend para 13, 14, 15, 17, 18, 19, 28 and 30 in respect of alleged sale deed of Shop No.4 and additional prayer (b-i) for declaring sale deed dated 12.10.2010 in respect of Shop No.4 executed by Smt. Ram Murti Devi and Sh. Sachin in favour of Sh. Ravinder Kumar as null and void.

7. Plaintiff's application for incorporating aforesaid facts about Shop No.4 situated in property No.44, khasra No.53, Gali Sunaran, Najafgarh, New Delhi and for impleading Sh. Sachin S/o Sh. Radhey

Shyam and Sh. Ravinder Kumar S/o Sh. Sheo Pal as defendants No. 9 and 10 is allowed as aforesaid defendants are necessary to be joined in the present *lis* in order to enable the court to effectually and complete adjudicate upon and settle all the questions involved in the suit.

8. Amended plaint and amended memo of parties filed along with application on 19.09.2011 is taken on record.

**Announced in the open Court
on 09.09.2019**

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