

11CS DJ ADJ 308/19
JAI NARAIN AND ORS Vs. JAI SINGH AND ORS

02.12.2021

Present: Sh. Sudhanshu Tomar, Ld. Counsel for plaintiff.
Sh. D.V. Khatri, Ld. Counsel for defendants nos. 1 to 10.
Sh. Surender, Ld. Counsel on behalf of LRs of defendant no. 17.
Sh. Vinay Pratap Singh, Ld. Counsel for defendant no. 18 along with defendant no. 18.

Arguments heard upon the application u/o XXXIX Rule 1 and 2 of CPC. Ld. Counsel for plaintiff submitted that he had filed present suit for partition of the joint properties as mentioned in para no. (i) to (vi) in prayer clause (a) of the application. The defendants may raise illegal and unauthorized construction upon the suit property and may create third party interest in the same. Therefore, they may be restrained from doing the so during pendency of the suit and this application may be allowed.

Ld. Counsel for defendants nos. 1 to 10 opposed the application and had also filed reply to this application stating that the plaintiff is having no right, title or interest in the suit property i.e. Mark C in the site plan. Defendants are not having any intention of raising any kind of illegal or unauthorized construction. The plaintiff had already constructed the building in the suit property mentioned in para (i) and he is malafidely obstructing the rights of the defendants in the said property. The suit and the application filed by the plaintiff is not maintainable and therefore, present application

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may be dismissed.

I have considered the submissions of both the parties and perused the record. Present suit has been filed by the plaintiff seeking partition and permanent injunction as per prayer clause, plaintiff had sought the decree of partition as well as permanent injunction qua the suit property as mentioned in prayer clause (A) from para no. (i) to (vi). During arguments, Ld. Counsel for the plaintiff/applicant stated that he is not pressing the prayer regarding permanent injunction and he is pressing only the prayer that the defendants may be restrained from creating any third party interest in the suit property. Regarding property bearing Khasra No. 329 as mentioned in para no. (i), Ld. Counsel for defendants nos. 1- 10 stated that the plaintiff is already having possession of more than his half share and has already constructed a building and therefore, plaintiff is having no right in the remaining vacant portion of the said property. However, it is admitted that the property in Khasra No. 329 is a joint property. During arguments, it is further not disputed that other properties as mentioned in para no. (ii) to (vi) are also joint properties and the parties have constructed upon portions of the same. Therefore, in view of the facts and circumstances and admitted position that the suit properties as mentioned in para no. (A) to (vi) are joint properties. Particular share of the parties are to be adjudicated through this suit. Hence, both parties are restrained from creating any kind of third party interest qua the suit properties as mentioned in prayer clause (i) to (vi) of prayer clause A during pendency of the suit. Application u/o XXXIX Rule 1 and 2 of CPC stands disposed of accordingly.

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Application u/o XII Rule 6 of CPC, application u/o VII Rule 11 of CPC and u/s 11 of CPC have been moved on behalf of defendants nos. 1 to 10. Copies have been supplied to opposite party.

Put up for arguments on these applications on **28.01.2022.**

(Dr. Jagminder Singh)
ADJ-03/South West
Dwarka / New Delhi
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