

04.10.2024

Present: Sh. Sanjeev Kaushik, Ld. Counsel for the plaintiff with husband of plaintiff/PW4.
Ms. Vandana S. Bhandari, Ld. Counsel for the defendants.

(1) Perusal of record reveals that vide order dt. 07.06.2024, plaintiff was given only one opportunity to lead evidence for additional issue on today. Evidence by way of affidavit is also E-filed on behalf of PW4 on 30.09.2024 with advance copy to the opposite side. PW4 is also present.

(2) However, application u/o XVI and order XIX r/w Section 151 CPC, application u/o XVII Rule 1 r/w Section 151 CPC and application u/o I Rule 10 r/w section 151 CPC alongwith order dt. 31.07.2024 and 01.08.2024 passed by Hon'ble High Court of Delhi in FAO 247/2024 filed on behalf of defendants. Copy supplied.

(3) Ld. counsel for plaintiff submits that he is not inclined to file reply above applications and would straight way to argue the same. It is submitted that above applications are filed with sole intention to delay the proceedings.

(4) In view thereof, argument heard on above applications. Record perused.

(5) In present application, Ld. counsel for defendants mainly raised three legal objections w.r.t. evidence by way of affidavit filed on

behalf of PW4. **Firstly**, contents of evidence by way of affidavit are beyond the pleadings. **Secondly**, evidence already lead on behalf of PW1 and present evidence is limited to the extent of additional issue framed by this court vide order dt. 07.06.2024. **Thirdly**, PW4 can not rely upon alleged Will as no leave of this court is taken while placing on record the alleged Will.

(6) *Per contra*, Ld. counsel plaintiff submits that PW4 has come from Canada to depose in present matter today but, defendant is deliberately making vague objections just to delay present proceedings. It is also submitted that additional issue was framed on 07.06.2024 only after taking consent from both parties. However, he has no objection, in case evidence by way of affidavit of PW4 is limited to the pleadings already made and additional issue framed by this court vide order dt. 07.06.2024.

(7) **In view of submissions made by the parties and considering the facts and circumstances of this case, evidence shall be recorded on behalf of PW4 to the extent of pleadings and additional issue only.**

(8) Further, since PW4 is claiming better right, title or interest qua suit property only on the basis of Wills dt. 08.04.2005 and 22.01.2022. In considered opinion of this court above Wills are necessary for disposal and adjudication of actual disputes between the parties. Hence, both Wills are taken on record.

(9) **In view thereof, above applications u/o XVI and order XIX as well as Order XVII Rule 1 CPC stands disposed off. However, defendants would be at liberty to raise all legal objections at the time of final adjudication of present matter.**

(10) So far as, application u/o I Rule 10 r/w section 151 CPC is concerned, defendants have already challenged order dt. 07.06.2024 before Hon'ble High Court of Delhi vide FAO 247/2024, same is still pending for disposal. Thus, application u/o I Rule 10 CPC is kept pending. Let reply, if any to the same be filed within 02 weeks with advance copy to opposite side.

(11) PW4 is examined. However, his cross-examination is deferred at request of Ld. counsel for defendant.

(12) In view thereof, put up for cross-examination of PW4 on 15.10.2024 and 16.10.2024 at 02:00 PM.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 04.10.2024