

20 CS DJ ADJ 478/19 RICHY REPLENENT RAJ AND ANR Vs. JAI SINGH AND ORS

04.08.2023

Present: Sh. Deepak Kohli, Ld. Counsel for plaintiffs alongwith plaintiff No. 1.
Sh. M.C. Premi, Ld. Counsel for all the defendants alongwith defendant No. 2

Arguments on application under Order XII Rule 6 CPC heard.

Present suit has been filed by plaintiffs seeking partition of property bearing No. RZ 50 B, gali no. 4, Mohan Block, West Sagarpur, measuring 60 sq. yards (hereinafter called as suit property). Plaintiff No. 1 is grandson of defendant No. 1 and plaintiff No. 2 is the mother of plaintiff No. 1. Defendant No. 2 is the son of defendant No. 1.

As per plaintiff, the suit property is the joint property of deceased grandmother namely Smt. Hira Devi of plaintiff No. 1 and defendant No. 1 who was the husband of Smt Hira Devi. Plaintiff avers that Smt Hira Devi expired on 19.02.2014 leaving behind three class one legal heirs i.e plaintiff No. 1's father and defendant No. 1 and 2.

Plaintiff further avers that since father of plaintiff No. 1 expired prior to Smt. Hira Devi, therefore plaintiffs being legal heirs, are entitled to the 1/3rd share of half of the suit property being legal heirs of deceased Smt. Hira Devi.

Written statement has been filed on behalf of defendants wherein it has been averred that defendant No. 1 is the sole and absolute owner of the

suit property. It is further averred that plaintiffs are having no relation with defendants since long. It is further averred that plaintiff No. 2 has no right to claim share in the share of deceased Smt Hira Devi.

Application under Order XII Rule 6 CPC has been moved on behalf of plaintiff seeking a judgment and decree on the basis of admission.

I have heard the rival contentions and perused the record.

Record reveals that though defendant No. 1 claims that the suit property is his absolute property, however the title documents (vis. GPA, agreement to sell and purchase, affidavit, Will) filed by defendants reveal that the suit property has been purchased in the joint name of defendant No. 1 Jai Singh and his wife i.e. Smt Hira Devi. Therefore parties are *ad adiem* regarding the suit property being the joint property of defendant No. 1 and Smt. Hira Devi.

The factum of Smt. Hira Devi dying intestate is not in dispute. Plaintiff No. 1 and both the defendants are the only class one legal heirs of Smt Hira Devi. Plaintiff no. 2 shall not qualify as class one legal heir being the daughter in law.

Therefore the present suit stands partly decreed and a preliminary decree of partition is passed with respect to suit property bearing No. RZ 50 B, gali no. 4, Mohan Block, West Sagarpur, measuring 60 sq. yards.

Plaintiff No. 1 and both the defendants are held entitled to 1/3rd share each of the share of Smt Hira Devi in the suit property. To put it in simple words, plaintiff No. 1 is held entitled to 1/6th share in the suit property ($\frac{1}{2} \times \frac{1}{3}$), defendant No. 1 is held entitled to $\frac{4}{6}$ th share in the suit property { $\frac{1}{2}$ (being joint owner) + 1/6th) and defendant No. 2 is held entitled to 1/6th share ($\frac{1}{2} \times \frac{1}{3}$) in the suit property.

Decree Sheet be prepared accordingly.

Parties are directed to suggest the mode of partition of the suit property by metes and bounds.

Put up on 02.11.2023.

(ANUJ AGRAWAL)
ADDL. DISTT. JUDGE-05
DWARKA COURTS, NEW DELHI/04.08.2023