

IN THE COURT OF ADDL.DISTRICT JUDGE-05:
SOUTH-WEST DISTRICT: DWARKA COURTS: NEW DELHI

CS No: 478/19

IN THE MATTER OF

Richy Resplendent Raj & Anr.

... Plaintiffs

Versus

Sh. Jai Singh & Anr.

.... Defendants

ORDER

1. Vide this order, I shall dispose off an application U/o. 39 Rules 1 & 2 CPC moved by the plaintiffs.

2. Brief facts necessary for disposal of the application are that the plaintiffs have filed the present suit for partition of the property bearing No. RZ-50B, Gali No.4, Mohan Block, West Sagar Pur, Delhi—110046, measuring 60 sq. yards (Old Property No- Plot No. 50, Out of Khasra No. 24/13/2, situated at Raghu Nagar, Mohan Block, area of village Dabri, Delhi).

3. It is stated that the aforesaid property is the joint property of deceased grandmother namely Smt. Heera Devi of plaintiff no.1 and defendant no.1. The grandmother Smt. Heera Devi and defendant no.1 have the equal undivided share in the said property. Smt. Heera Devi has expired on 19.02.2014 leaving behind three legal heirs i.e. plaintiff no's.1 father and defendant nos. 1 & 2. Since the father of plaintiff no.1 expired prior to Smt. Heera Devi, hence, being legal heirs of Sh. Rajender Kumar Saxena, both the plaintiffs have equal rights in the said property. It is stated that the said property is ancestral property in which plaintiffs have 1/6th undivided share which the defendant wants to usurp as they are trying to sell off the suit property. It is further stated that there was outer caste marriage of plaintiff no.2 with deceased Sh.Rajender Kumar Saxena which was not bearable by defendant no.2. Though, defendant no.1 and his wife has no objection to the same. The defendant no.2 did not want the peace in the family and therefore, plaintiffs decided to reside separately but they have equal share in the suit property. Now, the defendants are threatening to sell off the suit property. Therefore, the plaintiffs have filed the present suit

seeking partition of the suit property by metes and bounds.

4. The defendants filed the joint written statement contending that defendant no.1 is the sole owner of the suit property having purchased from his own funds received after retirement on 30.06.1991. Deceased Smt. Heera Devi was the wife of defendant no.1 and she was a house wife and after retirement, defendant no.1 purchased the suit property and made the payment of sale consideration of Rs. 60,000/- through cheque. It is stated that deceased Sh. Rajender Kumar Saxena was having no relations with the defendants for the last 35 years after his marriage with plaintiff no.2. The plaintiffs even did not attend the cremation of Sh. Rajender Kumar Saxena as they used to ill-treat him. It is stated that plaintiff no.2 has no share in the suit property. It is stated that plaintiffs have no right, title or interest in the suit property as the suit property is absolutely owned by defendant no.1. The defendants have denied the other averments made in the plaint and prayed for dismissal of the suit.

5. The plaintiffs have filed the replication to the WS of the defendants in which they reiterated the averments made in the plaint and denied those of the written statement.

6. Alongwith the suit the plaintiffs have filed an application U/o. 39 Rule 1 & 2 CPC in which it is prayed that defendants may be restrained from selling, transferring or creating third party interest in the suit property during the pendency of the suit.

7. The defendants have filed reply to the application as well and prayed for dismissal of the same.

8. I have heard the Ld. counsels for the parties and perused the record carefully.

9. The plaintiffs have claimed that the suit property is the joint property of late Smt. Heera Devi who is the grand mother of plaintiff no.1 and defendant no.1. Plaintiffs have further claimed that late Sh. Rajender Kumar Saxena who was the

father of plaintiff no.1 and husband of plaintiff no.2, has expired prior to the death of late Smt. Heera Devi who has expired on 19.02.2014 and as such, the plaintiffs alongwith the defendants have acquired 1/6th right in the property owned by late Smt. Heera Devi.

10. The defendants have taken a plea in the written statement that defendant no.1 is the sole and absolute owner in possession of the suit property which he had purchased out of his retirement funds received on 30.06.1991.

11. In support of their claim, the plaintiffs have relied upon the GPA, Agreement to sell, Affidavit, Receipt, Will, all dated 16.03.1992. The said documents would reveal that the suit property was jointly purchased by late Smt. Heera Devi and the defendant no.1 Jai Singh. The defendants have not disputed the aforesaid documents filed by the plaintiff rather they have also relied upon the same set of documents and filed alongwith the written statement.

12. In view of the said documents, the plea of the defendants that defendant no.1 is the sole and absolute owner of the suit property cannot be accepted. The aforesaid documents shows that the suit property is jointly owned by defendant no.1 Jai Singh and his wife late Smt. Heera Devi who is the grandmother of plaintiff no.1 and mother of defendant no.2.

13. Since, the father of plaintiff no.1 has pre-deceased Smt. Heera Devi therefore, the plaintiff no.1 alongwith defendants have succeeded to the half share in the aforesaid property which belongs to late Smt. Heera Devi. As such, the plaintiff no.1 has been able to make out a prima facie case as it is not in dispute that plaintiff no.1 is the son of late Sh. Rajender Kumar Saxena who was the son of defendant no.1 and Smt. Heera Devi. Since the present suit is a suit for partition to the extent of half undivided share of late Smt. Heera Devi in the suit property which has devolved upon plaintiff no.1 and defendants therefore, balance of convenience also lies in favour of plaintiff no.1 and in case the suit property to the extent of half share of Smt. Heera Devi is sold off or any third party interest is created,

it will lead to multiplicity of litigations and plaintiff no.1 will suffer irreparable loss which cannot be compensated in terms of money.

14. Hence, during the pendency of the suit, half share belonging to late Smt. Heera Devi in the suit property is required to be preserved. Accordingly, the present application is allowed and defendants are restrained from selling, transferring or creating any third party interest in respect of half share of late Smt. Heera Devi in the suit property i.e. RZ-50B, Gali No.4, Mohan Block, West Sagar Pur, Delhi-110046, measuring 60 sq. yards (Old Property No- Plot No. 50, Out of Khasra No. 24/13/2, situated at Raghu Nagar, Mohan Block, area of village Dabri, Delhi).

Nothing stated hereinabove shall tantamount to my expression on the merits of the case.

Dictated & Announced in the
open Court on 18.12.2019

(Balwant Rai Bansal)
Addl. District Judge-05
South-West District/Dwarka Courts
New Delhi