

19 CS DJ ADJ 606/20 POOJA BAKSHI Vs. MOHIT BAKSHI AND ORS.

24.11.2023

Regular steno is on leave and no substituted steno is available.

Present: Sh. Piyush Chhabra, Ld. Counsel for plaintiff.

Sh. Abdul Sattar, Ld. Counsel for defendant no. 1 along with defendant no. 1.

Mr. Mosin Ahmad, Ld. Counsel for defendant no. 2 and 3.

Matter is fixed for consideration of miscellaneous pending applications i.e. application u/o VI Rule 17 CPC, application under Order XXXIX Rule 1 and 2 CPC, application u/o VII Rule 14 CPC, application u/o 18 Rule 16 CPC and application u/s 340 CrPC filed by the plaintiff.

Since application u/o VI Rule 17 CPC is filed for amendment of pleadings, this court heard the arguments on behalf of both the parties prior to other applications.

Briefly stated, initially present suit filed by the plaintiff (sister) for declaration and permanent injunction w.r.t. **property bearing no. B-2/7, Agrasen Society, Dwarka, Sector-7, Delhi-45** (hereinafter referred to as the “*Suit Property*”) against defendant no. 1 (brother). It is averred that suit property was owned by late father namely Late Sh. Harish Chandra Bakshi who left for heavenly abode on 21.01.2014 leaving behind three daughters and one son out of which plaintiff is one of the daughter.

It is further averred that after the demise of Late Sh. Harish Chandra Bakshi, defendant taken his share and other two daughters

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(defendant no. 2 and 3) executed a registered RD in favour of plaintiff w.r.t. the suit property. However, since defendant started to create nuisance w.r.t. the suit property, present suit filed before this court.

It is further submitted that, during the pendency of present suit, defendant unauthorisedly taken the possession of the suit property and claimed ownership on the basis of forged Will purportedly executed by Late Sh. Harish Chandra Bakshi. Thus, present application u/o VI Rule 17 CPC filed for incorporating necessary pleadings and additional prayer w.r.t. possession of suit property and declaration to forged Will as null and void.

Per contra, Ld. Counsel for defendant no. 1 vehemently opposed the present application on the ground that, defendant no. 1 was always in possession of suit property and present suit is not maintainable for two reasons. *Firstly*, due to the bar under Family Courts Act, *secondly* for the reason that civil court cannot declare Will as null and void.

However, Ld. Counsel for defendant no. 2 and 3 submits that, they have no objection if present application u/o VI Rule 17 CPC is allowed.

Submissions heard. Record perused.

It is well settled law that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose determining the real controversies between the parties. Since, in the present suit both parties are claiming ownership of the suit property, in the considered opinion of this court, this is a fit case for the purpose of amendment of plaint in lieu of subsequent circumstances. This court does not find any merit in the submissions of

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defendant w.r.t. the bar under Family Court as present suit is not out of the matrimonial relationship between the parties as specified u/s 7 of Family's Court Act. Moreover, in the considered opinion of this court, this court has jurisdiction for the purpose of declaration w.r.t. any document to be declared as null and void on trial.

Accordingly, in view of well settled law and considering the stage of the present proceedings as matter is still pending for completion of pleadings, present application u/o 6 Rule 17 CPC is allowed subject to cost of Rs. 2,500/-, out of which 50% to be paid to DLSA and 50% to be paid to the defendant no. 1 i.e. the contesting party to the present suit. Amended plaintiff is taken on record. Let WS be filed to the amended plaint as per statutory procedure. Plaintiff is at liberty to file replication, if any within two weeks thereafter.

At this stage, Ld. Counsel for plaintiff submits that, his application under Order XXXIX Rule 1 and 2 CPC is also pending for disposal. Admittedly, possession of the suit property is with the defendant no. 1. Thus, considering the facts and circumstances of the present case, this court is of the considered opinion that all three ingredients i.e. *prima facie case, balance of convenience and irreparable loss* i.e. required for the purpose of interim injunction are satisfied. **Accordingly, application under Order XXXIX Rule 1 and 2 CPC is disposed off. Defendant no.1 is restrained to create third party right or to part with possession of the suit property i.e. property bearing no. B-2/7, Agrasen Society, Dwarka, Sector-7, Delhi-45 during the pendency of the present suit.**

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In view of the facts and circumstances of present case pending application u/o VII Rule 14 CPC is also disposed off. Additional documents as filed by the plaintiff are taken on record. Let the copy of additional documents be supplied to defendants within two weeks.

It is made clear that no objection has been made by defendant no. 2 and 3 to any of the pending application filed by the plaintiff.

Considering the facts of the present case, parties are directed to appear either physically or virtual mode on the next date of hearing.

Since issues are yet to be framed, application u/o XVIII Rule 16 CPC could not be heard at this stage.

In view thereof, put up for completion of pleadings, admission/denial of documents, framing of issues and for arguments on pending applications on **16.02.2024**.

(SHILPI M JAIN)
ADJ-05 (SW)/Dwarka Courts
New Delhi: 24.11.2023