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CS DJ ADJ 918/19
Sudesh Vs. Sunita

12.07.2024

Present: None.

Be awaited for 11:30 AM

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 12.07.2024

At 11:54 AM

Present: Sh. Piyush Chhabra, Ld. counsel for plaintiff.
Sh. Mohit Nehra, Ld. counsel for all defendants.

WS not filed on behalf of defendant no. 2 to 4 despite specific direction. Hence, defence of defendant no. 2 to 4 stands struck off.

Record reveals that WS is already on record filed on behalf of defendant no. 1. Hence, following issues are framed:

- (1) Whether the plaintiff is entitled for preliminary decree of partition of property bearing Plot No. B-1/43-A, Ground Floor, Sewak Park, Block-B1, Dwarka Mor, Uttam Nagar, New Delhi-110059, ad-measuring about 100 sq. yards (hereinafter referred as '*suit property*')? If affirmative at what share? OPP
- (2) Whether the plaintiff is entitled for final decree of partition of suit property, as prayed for? OPP
- (3) Whether the plaintiff is entitled for permanent injunction of suit property, as prayed for? OPP
- (4) Relief.

No other issue arises or pressed for.

List of witnesses be filed by both the parties within 15 days, after exchanging copies thereof. The copies of evidence by way of

affidavit of the witnesses be supplied to opposite side at least 15 days prior to the NDOH.

At this stage, Ld. counsel for plaintiff pressed upon his application under Order XXXIX Rule 1 and 2 CPC as same is still pending for disposal.

Ld. counsel for plaintiff submits that defendant no. 1 is her real sister who is having actual physical possession of the suit property. While, Ld. counsel for defendants disputed this fact and submitted that it is defendant no. 3 who is having actual physical possession of the suit property.

Submission heard. Record perused.

Briefly stated, present suit for partition was initially filed by the plaintiff against her real sister. However, after filing of WS, applications under Order 1 Rule 10 CPC filed on behalf of plaintiff to implead defendant no. 2 to 4 who claimed to be other legal heir of Late father of the plaintiff.

Record reveals that application under Order 1 Rule 10 CPC was allowed vide order dated 27.05.2023 and amended plaint filed. Thus, considering the fact and circumstances of the case and to avoid multiplicity of legal proceedings, present application under Order XXXIX Rule 1 and 2 CPC stands allowed.

Let, **status quo** be maintained during the present proceedings.

Defendants are also restrained to create to third party interest for suit property during the pendency of the present suit. Ld. counsel for defendants undertake to comply the order.

Now come up for PE on 15.10.2024.

(SHILPI M JAIN)
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