

SHRI SATPAL SINGH, Vs. STATE OF NCT OF DELHI

19.12.2024

Present: None for the parties.

Put up at 4.00 Pm for order.

(SHIV KUMAR)  
District Judge-02, Court no.127,  
West Distt, Tis Hazari courts

**At 3.55 PM**

Present: None for the parties.

1. Vide this order, I shall decide the application filed under order 7 rule 11 CPC by the respondent no. 2 & 3. The present application has been filed, mainly, on the following grounds:

*(I) Petitioner has no cause of action to file the present petition.*

*(ii) The present petition is hit by Provision of Section 11 of CPC as the issue of Will in question has already been decided in favour of the respondent, in eviction petition, titled "Satpal Singh Vs. Sh. Mohinder Singh", which was filed by the petitioner, vide order judgement dated 19.02.2015 and the judgement dated 23.11.2021, passed in the appeal of the said case.*

2. The other objections taken by the respondents, in the present application are objections on merit, which cannot be decided in the present application, without leading evidence. Hence, the other objections of respondents have not been mentioned herein being not relevant for deciding the present application under order 7 rule 11 CPC.

3. Petitioner has filed reply to the present application.

4. Arguments heard. Case file perused.

5. As per petitioner, the deceased Late Sh. Mohinder Singh had executed the Will in question, in favour of the petitioner on 05.08.1996 and Sh. Mohinder Singh died on 30.12.2019. The present petition has been filed by the petitioner on 07.02.2022.

6. It is averred by the petitioner that he had filed the abovesaid eviction case against the deceased and in which, the deceased had denied the execution of Will and other documents, in favour of the petitioner and the said eviction case and appeal of the eviction case filed by the petitioner, have been dismissed by the court, vide judgments dated 19.02.2015 and 23.11.2021.

7. The testator was alive at the time of passing of judgement dated 19.02.2015 in the abovesaid eviction case. The testator has died on 30.12.2019. It is settled legal proposition that the Will operates only after the death of the testator, so, the petitioner was not required to

prove the Will, during the life time of testator, in order to seek eviction order, specifically, when no issue regarding will in question was framed. The will has no binding effect, during the lifetime of the testator and during the life time of the testator, no relief, on the basis of the said Will, can be claimed by any of the beneficiaries of the Will.

8. The present petition has been filed by the petitioner after the death of the deceased. The Will in question has been denied by the testator, during his lifetime. The Will in question is a registered Will and the respondent has the right to prove the revocation of Will, as per Section 70 of Indian Succession Act and issue regarding this can be framed at the time of framing of issues. The testator has denied the Will, during his lifetime but the petitioner has the right to file the present petition only after the death of the testator. Hence, the petitioner has cause of action to file the present petition and this cause of action commenced from the date of death of the testator. Therefore, it is held that the present petition is within limitation from the date of death of the testator.

9. I have perused the judgement dated 19.02.2015. As per the judgement, no issue regarding validity of Will in question was framed by the Court and as per Para no. 8 of the abovesaid judgment, following issues had been framed in the eviction petition.

*(I) That there is relationship of landlord and tenant between the parties;*

*(ii) Rate of rent;*

*(iii) That there were arrears of legally recoverable rent at the time of issuance of legal demand notice;*

*(iv) That avlid legal demand notice was duly served upon the respondent; and*

*(v) That the respondent has neither paid nor tendered the entire arrears of legally recoverable rent within two months of date of receipt of legal demand notice.*

10. In the abovesaid judgement of case titled “Satpal Singh Vs Sh. Mohinder Singh” dated 19.02.2015, there is no findings on the Will in question, as to whether, it is valid or invalid Will. tt is mentioned in para 12 & 13 of judgement as under:

*“12 .... Further, as the alleged testator/respondent Sh. Mohinder Singh is alive, therefore, the Will Ex PW-1/3 is of no consequence.”*

*“13. Apart from this, despite denial of execution of such documents Ex PW-1/1 to Ex PW-1/5 by defendant, no effort is made by the petitioner to prove the execution of same. Even, the so-called witness to such documents was not examined by the petitioner despite opportunity available.”*

11. Copy of judgment passed in appeal has not been attached by the petitioner.

12. It is settled law that in eviction petition, the petitioner has to prove only landlord and tenant relationship between him and the

testator and not to prove his title over the rented property.

13. This court is of the view that will in question was not directly and substantially in issue in the eviction petition and even issue regarding will in question was not framed in the eviction petition and there is no finding of Ld Trial court regarding validity and invalidity of the Will in question. Thus, the present petition is not barred by Section 11 CPC.

14. In view of abovesaid facts and observations, this court does not find any merit in the application of respondent no. 2 & 3 and therefore, the present application filed under order 7 rule 11 CPC stands **dismissed** being devoid of any merit. *Application stands disposed off accordingly.*

Put up for completion of pleadings and for framing of issues on **07.03.2025**.

(SHIV KUMAR)  
District Judge-02, Court no.127,  
West Distt, Tis Hazari courts  
Delhi:19.12.2024