

Civ DJ 230/17

SEEMA AND ORS. Vs. GANPATI AND ORS

16.09.2022

Present : Sh. Ashish Kapoor, ld. counsel for plaintiff.

Sh. Sandeep Singh, ld. counsel for defendant no.6. He submits that he is also appearing as proxy for counsel for defendant no.2.

Plaintiff has filed the suit for partition of the properties of her father-in-law, late Mali Ram.

An application under Order 14 Rule 5 CPC moved on behalf of defendant no.2 for framing of additional issues. Copy supplied.

Defendant no.2 averred that he was never served with summons of the suit. Earlier her defence was closed. She moved application for recalling of her defence's order. She filed written statement but by that time issues were already framed by the court on 18.09.2019. It is thus prayed that following two issues may be framed:

1. Whether the suit of the plaintiff is properly valued for the purpose of valuation and court fees and proper court fees has been paid on the suit?

OPP

2. Whether the immovable properties as mentioned in the petition of which the plaintiffs are seeking the partition are owned and possessed by lt. Mali Ram at the time of his death? OPP

Cont...P/2

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Plaintiff submits that she is widow of late Pawan Kanodia, who was the son of late Mali Ram and defendants by filing various frivolous applications are prolonging the trial of this suit. She has no source of income and she has responsibility of two children. She has claimed partition of the Suit Properties and the suit may be decided expeditiously.

Heard. Record perused.

Matter is at the stage of evidence. The plaintiff has claimed to be in constructing possession of the Suit Property as she is the widow of the son of late Mali Ram. Therefore, *ad-volerum* court fees is not required to be paid. The contention of the defendant no.2 qua proposed issue no.2 has already been covered in the issues already framed by the Court on 18.09.2019. Therefore, no other issue is required to be framed. In view thereof, application is dismissed.

Heard on the application of defendant no.6 filed under Section 151 CPC for recalling of order dt. 06.06.2022.

Inadvertently it was submitted by counsel for the parties on 06.06.2022 that the subject properties belongs to father-in-law of plaintiff no.1, namely late Mali Ram. Plaintiff is widow of late Pawan

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Kanodia, who was the son of late Mali Ram. Therefore, defendant's evidence could be led first. However, as per the defendant's version, some of the subject properties belongs to plaintiff's mother-in-law, who has transferred the properties by virtue of a Will and other documents in favour of defendant(s). Thus, plaintiff's evidence is required to led first to ascertain that the subject properties belongs to late Mali Ram and are a matter of partition in the instant suit. In view thereof, the order dt.06.06.2022 is recalled and plaintiff's is directed to lead her evidence first.

Matter is listed for PE on **22.10.2022.**

(Manish Sharma)
Additional District Judge-01(West)
Tis Hazari Courts, Delhi