

20.01.2024

Present: Sh. Mukesh Sharma, Id. Counsel for the plaintiff alongwith plaintiff in person.
Sh. Vikas Sharma, Id. Counsel for the defendant alongwith defendant in person.

In the present case plaintiff is seeking partition of the suit property on the ground that she is the adopted daughter of the deceased and having share in the suit property being adopted daughter of the deceased.

Case file reveals that no issue regarding above said fact has been framed on 20.12.2023 so additional issue is required to be framed to this aspect. The additional issue is framed as under;

Addl issue no. 8. whether plaintiff is the adopted daughter of the deceased and entitled to inherit the property of the deceased and has any right, share, title in the suit property? OPP

Arguments heard on application u/o 39 rule 1 & 2 CPC.

Ld. Counsel for the defendant submits that defendant has already sold the property bearing no. D-1/C-16, Kanwar Singh Nagar, Nangloi on 3.3.2021. Ld. Counsel for the defendant further submits that plaintiff is not the adopted daughter of the deceased and she has no concern with the suit property. He further submits that suit of the plaintiff is not maintainable. He further submit that he can sell any property and that sale of the property will be subject to doctrine of lis pendence and will be liable

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with the final outcome of the present suit. He further submits that the application u/o 39 rule 1 & 2 CPC may kindly be dismissed as there is no merit in the application of the plaintiff.

Ld. Counsel for the plaintiff further submits that defendant has already sold the property of Village Nangloi Delhi and he has filed photocopy of GPA, sale Agreement, Receipt of payment and affidavit of A/D of documents. Copy supplied to opposite party.

Ld. Counsel for the plaintiff submits that the plaintiff is the adopted daughter of the deceased. He further submits that the deceased has died intestate and after his death being one of the legal heir, plaintiff is entitled to inherit $\frac{1}{2}$ share in the property of the deceased. He further submits that the plaintiff was born to Sh. Ram Kanwar, who is younger brother of the defendant's husband. He further submits that defendant and her husband had no issue from their wedlock and due to which the plaintiff's father gave plaintiff in adoption to the defendant and her husband and at that time the plaintiff was just born. He further submits that in all the documents attached by him with the plaint, defendant and her husband has been shown father of the plaintiff. It is further submitted by him that defendant in order to defeat the legal right of the plaintiff in the property of the deceased trying to sell out the property.

Heard. Case file perused.

With the plaint the plaintiff has attached Delhi Secondary School certificate, Mark Sheet, Passport, Pan Card and Aadhar card of the plaintiff. In all the documents the name of the parents of the plaintiff is shown as

defendant Santosh Devi and deceased Ram Kanwar. Prima facie there is evidence on record that the defendant and her husband was looking after the plaintiff and they both have got admitted plaintiff in the school and the documents have also been prepared at the address of the defendant. This fact also come on record that the defendant has sold the property after filing of the present suit.

The conduct of the defendant is not appropriate and clearly showing the intention of the defendant to dispose off the property without waiting the out come of the present suit. As per plaintiff, she is the adopted daughter of the deceased but the defendant is denying the said fact but in all the documents, the plaintiff is shown as daughter of the deceased. The documents of sale filed by the defendant are GPA, Agreement to Sell, Receipt and possession letter and these documents prima facie do not transfer any title in favour of the any person.

In view of the above said facts and circumstances, it is held that plaintiff has prime facie case as well as balance convenience lies in her favour and in case defendant is not restrain from selling or disposing off or creating third party interest in the property of deceased as well as share of the deceased in ancestral properties then the plaintiff shall suffer irreparable loss and injury. Therefore, defendant is restrained from selling, transferring or creating any third party interest in the suit properties till the disposal of the present suit. Hence, application u/o 39 rule 1 & 2 CPC is allowed.

Put up on the date already fixed i.e. 18.03.2024.

(SHIV KUMAR)
ADJ-02, West Distt.Tis Hazari Courts
Delhi:20.01.2024