

RCA No. : 60818/16
Birbal Saini Vs. Satyawati
CS No. : 333/2009

01.05.2017

Present:- Counsel for appellant.

File taken up today on an application u/s 151 CPC seeking stay of execution.

In terms of previous order dated 5.8.2016, status quo order qua possession of first floor of property no. 581, near Saini Chaupal Village Mundka, Delhi was directed to be maintained . Thereafter the order seems to have not been extended, whereas the matter is listed for final disposal for 11.5.2017.

It is submitted that in the execution proceedings, warrants of possession have been issued and appellant is under threat to be dispossessed without the disposal of the appeal.

Considering the abovesaid, it is directed that warrants of possession shall not be executed till the next date of hearing before this court. Application stands disposed off in above terms. Copy of order be sent to the trial court concerned as well as to the counsel for respondent. Put up on date fixed.

(Savita Rao)
ADJ-01 (West)/Delhi
01.05.2017

RCA No. : 60871/16 & 82/17

01.05.2017

Present:- Counsel for both the parties.

Vide separate order announced in open court, both the appeals are dismissed with no order as to cost. Decree sheet be prepared accordingly. TCR alongwith copy of order be sent back to the trial court. Copy of this order be placed in RCA no. 82/17. Appeal files be consigned to record room.

(Savita Rao)
ADJ-01 (West)/Delhi
01.05.2017

CS No. : 12922/16

Pawan Gaujaral Vs. Sita Ram Gujral & Ors.

01.05.2017

Present:- Counsel for plaintiff.
Counsel for defendant no.3.
None for other defendants.

1. Arguments addressed on application under order 12 rule 6 CPC. This is suit for partition filed by plaintiff claiming his share in property bearing no. D-167, Tagore Garden Extension, New Delhi – 27, which was owned by predecessor in interest of the parties to the suit.

2. By way of this application, plaintiff seeks partition of at least the ground floor and first floor of the property in question on the admission made by the defendants. It is pointed out that defendants no. 1, 2, 4 & 5 have not opposed the claim of plaintiff, whereas the only contesting defendant i.e. defendant no.3 has submitted about execution of oral will in his favour which has no sanctity in the eyes of law. Therefore, the ground and first floor can be partitioned between the parties.

3. With regard to second floor of the property in question, defendant no.3 has taken the plea that the second floor had been sold by their predecessor-in-interest in favour of Sh. Suraj Prakash Grover which was subsequently purchased by defendant no.3 from said Suraj Parkash Grover. Since the said fact is disputed fact on record, therefore Ld. Counsel for plaintiff does not wish to press for preliminary decree pertaining to the second floor of the property in question.

4. The application is strongly opposed by Ld. Counsel for defendant no.3 who placed reliance upon **86 (2000) DLT 817 (DB) Parivar Seva Sansthan Vs. Dr. (Mrs.) Veena Kalra & Ors.** wherein it was observed that “

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order 12 rule 6 confers very wide power upon the court to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings or otherwise. The admission may have been made orally or in writing. The court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal ; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis ”

5. Ld. Counsel for defendant no.3 further placed reliance upon **129 (2006) DLT (DB) Raj Kumar Chawla Vs. LUCAS Indian Services** wherein it was observed that “ The term “Admission” in section 70 of the Evidence Act relates only to admission of a party in the course of the trial of the suit and not to the attestation of a document by the party executing it. The essential feature of admission is that it should be ' concise and deliberate act'. It must not be something which was not intended and was not the intention of the party. Pre-requisite to admission are unconditional, unambiguous and intend the same to be read and construed as admission. The scope of admission of a claim is also explained under order 9 rule 8 of the code of civil procedure, which contemplates that there must be a claim as laid down in the plaint which is admitted, for the ground stated therein and not simply an admission of cause of action. The legislative intent is clear from the provisions of the code that an admission has to be unambiguous and clear .”

6. As already noted, all the other defendants except for defendant no.3 have also not disputed the claim of plaintiff. Defendant no.3 himself has taken

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the plea regarding existence of an oral will in his favour, which has no sanctity in the eyes of law.

7. To adjudicate validity of the Will, a party has to prove fulfillment of Section 63 of Indian Succession Act, which are as follows : -

1) the testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

2) the signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

3) the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has been some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

8. Will is a document required by law to be written and attested and if standard of proof as envisaged in Section 63 of Indian Succession Act and Section 68 of Indian Evidence Act, falls short of legal requirement, will cannot be taken into consideration for purpose of establishing the claim of the legatees. Mere wording of the section 63 itself point out that the will has to be written, duly attested by the witnesses which aspect itself is missing in the plea of defendant no.3.

9. Even otherwise in terms of written statement of defendant no.3 only, said oral will was executed in presence of defendants no.1 & 2. Defendants no.1

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& 2 have already submitted their 'no objection' with regard to the claim of plaintiff, therefore the alleged witnesses to the alleged oral will in favour of defendant no.3 also support the case of plaintiff, which amounts to unequivocal admission with regard to the claim of plaintiff.

10. Accordingly the application under order 12 rule 6 CPC stands allowed qua the ground and first floor of subject premises. Preliminary decree for partition is hereby passed with regard to 1/6th share each of the parties to the suit in ground and first floor of the property bearing no. D-167, Tagore Garden Extension, New Delhi – 110027. Decree sheet be prepared accordingly. For preparation of final decree, parties are at liberty to put their suggestive mode of partition on record by NDOH.

11. With regard to the remaining claim, issues are hereby framed:-

(1) Whether the suit has not been valued properly for the purpose of court fee? OPD-3

(2) Whether the suit of plaintiff pertaining to second floor of the property in question is not maintainable in view of para 4 of the written statement of defendant no.3 ? OPD-3

(3) Whether the plaintiff is entitled for relief of partition pertaining to second floor of the property, as well ? OPP

(4) Relief

12. No other issue arises or is pressed for. Since the onus of issues mainly is upon defendant no.3. therefore DE shall be led first. Put up the matter for DE for 13.11.2017. Affidavits of defendant's witnesses be filed on record with copy in advance to counsel for opposite party.

(Savita Rao)
ADJ-01 (West)/Delhi
01.05.2017