

IN THE COURT OF SH. PAWAN SINGH RAJAWAT:
ADDITIONAL DISTRICT JUDGE-08 (WEST DISTRICT):
TIS HAZARI COURTS: DELHI.

CS No. 664/2021

In the matter of:-

SHRI BRIJ MOHAN SHARMA

.....PLAINTIFF

VERSUS

SMT. KANCHAN SHARMA

.....DEFENDANT

ORDER

1. Vide this order, I shall dispose of an application filed by plaintiff under Order XXXIX Rule 1 and 2 CPC praying for grant of ex-parte interim injunction against the defendant.

2. The brief facts which are relevant for deciding the present application are that plaintiff has filed the present suit for partition and permanent injunction.

3. In the suit, it was averred by the plaintiff that the mother of the plaintiff Smt. Sumitra Devi W/o. Sh. Harbans Lal was the owner of the entire property bearing no. F-38, area measuring 100 sq. yds., with all its roof / terrace right and structure standing thereon, part of Khasra no. 31/14/1, situated in the area of Village Khyala, now abadi known as Vishnu Garden, New Delhi-110018.
4. It was further averred by the plaintiff that earlier the entire property was measuring 180 sq.yds, however during the lifetime of his mother she transferred 80 sq.yds. and his mother remained owner of western side of property. It was further averred that after the death of his mother on 18.02.2008, all legal heirs became owner of the said property to the extent of 1/5th undivided share each.
5. It was further averred that his brother Sh. Amrit Lal Sharma i.e. husband of defendant also died and his three sisters i.e. Ms. Santosh Sharma, Smt. Rama Rani and Smt. Rekha Sharma as well as two sons of Sh. Amrit Lal Sharma i.e. Sh. Vijay Amrit Raj and Sh. Anand Amrit Raj (who were also having 1/5th undivided share alongwith defendant being the share of Sh. Amrit Lal Sharma) relinquished their undivided shares in the said property in favour of defendant by virtue of Relinquishment Deed dated 25.08.2021, thereupon plaintiff and defendant became the joint owners of the property as the plaintiff is having undivided 1/5th share in the said property.

6. It was further averred that in the first week of September, 2021 the plaintiff came to know that the defendant without partitioning the said property and without giving 1/5th undivided share was looking for prospective purchaser and approaching local property dealers.
7. It was further averred that the plaintiff approached the defendant and requested her not to create any third party interest in the said property without first partitioning the same and giving undivided 1/5th share in the suit property but defendant refused to partition the said property and give any share to the plaintiff.
8. It was further averred that the defendant was constantly approaching the local property dealer and even visiting the Office of Sub-Registrar without partitioning the suit property and without giving due share of the plaintiff and therefore plaintiff made a representation / objection to the Office of Sub-Registrar on 20.09.2021 and requested the concerned official not to entertain any document for registration in respect of the said property, however, the concerned official advised him to approach the Court of law and obtain stay within 7 days.
9. Plaintiff had filed the present application under Order XXXIX Rule 1 and 2 CPC praying for ex-parte interim injunction restraining the defendant

from selling, alienating, creating third party interest or parting with possession of the suit property.

10. Written arguments were filed on behalf of defendant to the present application wherein it was averred that the plaintiff has not placed on record even a single document to show the title and ownership of Smt. Sumitra Devi and he has no locus standii to file the present suit. It was also mentioned that merely because the defendant alongwith LRs executed the relinquishment deed in ignorance of the location of title documents executed earlier, does not create any right in favour of the plaintiff.

11. It was averred by the defendant that plaintiff has averred in the plaint that the property in total measured about 180 sq.yds. and Late Smt. Sumitra Devi transferred 80 sq.yds in favour of plaintiff and remained owner of 100 sq.yds. It was further averred that in fact, Late Smt. Sumitra Devi was owner of 183 sq.yds and on 30.09.2001, an oral family settlement / distribution took place wherein it was decided that out of 183 sq.yds, 42 sq.yds. would be given to plaintiff, 40 sq.yds. would be retained by Late Smt. Sumitra Devi and 100 sq.yds. would be given to elder son i.e. her deceased husband, Sh. Amrit Lal Sharma and the documents such as General Power of Attorney, Will, Affidavit, Possession Letter and Receipt dated 30.10.2001 were also executed in favour of defendant's husband. It was further averred that Late Smt. Sumitra Devi also

executed GPA etc. in favour of plaintiff with respect to his portion measuring 42 sq.yds. while giving his share in the said property. It was further averred that after the death of Smt. Sumitra Devi, plaintiff requested Late Sh. Amrit Lal Sharma to give his share in the propertion, thereupon it was settled in the family that the portion of Late Smt. Sumitra Devi would be relinquished in favour of plaintiff as Late Sh. Amrit Lal Sharma was contend with his portion inthe property and therefore, his legal heirs executed a relinquishment deed dated 21.05.2008 after few months of their mother's death. It was further averred that the plaintiff sold the earlier portion which was given by his mother to him to a third party and enjoyed the benefits as such plaintiff has concealed the material facts and has not come to the court with clean hands. It is prayed that the present application of the plaintiff be dismissed.

12. I have heard Ld. Counsels for both the parties. I have also gone through the record.

13. As per Relinquishment Deed dated 25.08.2021 filed by the plaintiff, he is entited to 1/5th share in the suit property. However, the defendant is claiming that the plaintiff has already got his share as the property has already been partitioned by metes and bounds.

14. The pleadings are yet to complete and in view of the relinquishment deed on record, execution of which has not been denied by the defendant but claim that same was executed in ignorance, I am satisfied that prima facie balance of convenience lies in favour of the plaintiff and if the injunction is not granted, it may result into alienation of the suit property which may be detrimental to the rights of the plaintiff. Accordingly, an ad-interim injunction order is passed in favour of the plaintiff and against the defendant restraining the defendant, her family members, agents, servants, employees, associates etc from selling, transferring, alienating, letting out, parting with possession and / or creating third party interest in property bearing No. F-38, area measuring 100 sq.yds., with all its roof / terrace right and structure standing thereon, part of khasra no. 31/14/1, situated in the area of Village Khyala, now abadi known as Vishnu Garden, New Delhi-110018 with its freehold rights of the land beneath till the next date of hearing. Hence, application filed by plaintiff under Order XXXIX Rule 1 and 2 CPC stands allowed and disposed off.

**Announced in the open court
on 25th October, 2021.**

**(PAWAN SINGH RAJAWAT)
ADJ-08/WEST/THC/DELHI**