

CIV DJ no. 998/23
Jyotsna Khattar Vs Harsh Grover

02.09.2024

Present: Sh. Albar Qureshi, Ld counsel for the plaintiff through VC.
Sh. Rishikesh Kumar, Ld counsel for the defendant.

Ld counsel for the defendant submits that the plaintiff has no locus standi to file the present suit as a Will has been executed in favour of defendant regarding the property in question. He further submits that the plaintiff has not filed adequate court fee as the value of the property is more than Rs. 1,59,00,000/-.

Case file perused.

The present suit has been filed by the plaintiff for partition of suit property. The property in question had been purchased by Late Smt Asha Grover by sale deed dated 02.06.2023, who was the mother of the plaintiff. Smt Asha Grover has died on 14.06.2016 and the father of the plaintiff has died on 20.01.2020. The defendant is the brother of the plaintiff. As per Hindu Succession Act, the plaintiff and defendant have equal share in the suit property if the owner of the property died intestate.

The defendant is alleging that a Will dated 12.05.2012 has been executed by Late Smt Asha Grover. As per defendant, Smt Asha Grover bequeathed the property in question to the father of the parties and the father of the parties further bequeathed the said property by way of Will dated 25.07.2014 to the defendant.

***The Hon'ble Supreme Court of India titled in a case “
Ramisetty Venkatanna & Anr Vs Nasyam Jamal Saheb & Ors. Civil
Apeal no. 2717 of 2023 decided on 28.04.2023 has held as follows:***

“The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire meaningful reading of the plaint, it is found that suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under order 7 rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold in drastic, the condition enumerated under order 7 rule 11 CPC to the exercise of power of rejection of the plaint have to be strictly adhere to.”

It is settled law that for deciding an application under order 7 rule 11 CPC, the court has to examine only the averments made in the plaint as well as documents attached with the plaint. The plaint is required to be read as whole and the pleas taken by the defendant in the written statement as well as in the application under order 7 rule 11 CPC cannot be considered for deciding the application.

In the present case, the defendant has to prove the above-said both Wills and the above-said contention of the defendant can be decided only after leading evidence.

The plaintiff has assessed the market value of the property as Rs. 1,59,00,000/- and as per para no. 16 of the plaint, the plaintiff has paid the ad volerum court fee on the abovesaid value of the said property. The defendant is alleging that the value of the

property is more than Rs. 1,59,00,000/- but this contention is contention of merit and can be decided after framing issue in this regard. In view of the abovesaid facts, it is held that there is no merit in the application of defendant. Hence, the application under order 7 rule 11 CPC stands **dismissed**.

Parties are directed to file affidavit of admission/denial of documents within 14 days by supplying advance copy to each other.

Put up on **25.11.2024** for consideration of application under order 39 rule 1 & 2 CPC as well as framing of issues.

(SHIV KUMAR)
District Judge-02,Court no.127,
West Distt, Tis Hazari courts
Delhi:02.09.2024