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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 34/2021 and IA No. 792/2021, 793/2021, 2175/2021

SMT DEVINDER DHILLON & ANR.

..... Plaintiffs

Through Mr. Jayant Mehta, Sr. Adv with
Mr. Sumehar Bajaj and Mr. Bharat Arora, Advs for
Plaintiff No. 1.

versus

SH MANINDER SINGH DHINDSA & ORS. Defendants

Through Mr. Vivek Sharma and Mr. Saumya
Mehrotra, Advs. for Mrs. Suniti Dhindsa, D-1(a)/
LR of D-1.

Mr. Bhuvnesh Sehgal, Adv. for Mrs. Roshini
Dhindsa Chawla, D-1(c)/LR of D-1.

Mr. Akhil Sibal, Sr. Adv. with Mr. Jatin Mongia
and Mr. Akshit Mohan, Advs. for D-2/D-1(b).

Mr. Sanjiv Kakra, Sr. Adv. with Mr. Vikhyat
Oberoi, Mr. Arjun Narang and Mr. Abhishek Batra,
Advs. for D-4 and 5.

Mr. Kamal Bansal, Adv. for the proposed D-6
(Kailash Aggarwal).

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER
05.05.2021

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This hearing is conducted through video-conferencing.

IA No. 5939/2021

This is an application filed by the plaintiff to bring on record the LRs
of the deceased defendant No. 1.



The LR's of defendant No. 1, namely, Mrs.Suniti Dhindsa(wife of D-1), Mr.Dhruv Dhindsa (son of D-1) and Mrs.Roshini Dhindsa Chawla (daughter of D-1) are duly represented by the learned counsel.

I may note that this application is not on record. However, none of the defendants have any objection to this application.

The application is allowed. The aforesaid legal heirs of the deceased defendant No. 1 are taken on record. Amended memo of parties be filed within two weeks from today. The Registry to place the application on record.

IA No. 6140/2021

This is an application under Order 6 Rule 17 CPC filed by the plaintiff.

Issue notice.

Learned counsel for the LR's of the deceased defendant No. 1, defendant No. 2 and defendants No. 4 & 5 accept notice.

None has appeared for defendant No. 3.

Learned counsel for defendant No. 4 and 5 states that he has no objection to the present application.

The application is opposed by the learned senior counsel appearing for defendant No. 2.

Let reply be filed within four weeks from today. Rejoinder, if any, be filed within four weeks from today.

List on 26.08.2021.

CS(OS) 34/2021

Learned senior counsel for plaintiff No.1 states that plaintiff No. 2 does not wish to pursue the present suit any further. A communication to



that effect has been sent by plaintiff No.2 to learned counsel for plaintiff No.1 and to learned counsel for the defendants.

The receipt of the communication from plaintiff No. 2 has not been disputed by learned counsel for the defendants.

In view of the above, plaintiff No. 2 is transposed as a defendant.

In the interest of justice, let fresh summons be issued to the newly transposed defendant (previously plaintiff No. 2) by speed post, courier and email, returnable for 26.08.2021.

IA 5821/2021

This is an application filed under Order 1 Rule 10 CPC for impleadment of Mr.Kailash Aggarwal, the alleged builder of the property at South Extension as defendant No.6.

Learned counsel for the proposed defendant states that Mr. Kailash Aggarwal and his immediate family members have been down with COVID.

Let a reply be filed within three weeks from today. Rejoinder, if any, be filed within three weeks thereafter.

List on 26.08.2021.

IA No. 5822/2021 (u/O 39 R 1 & 2 CPC)

Issue notice

Learned counsel for the proposed defendant accepts notice.

He seeks some time to file a reply. Needful be done within three weeks. Rejoinder, if any, be filed within three weeks thereafter.

Let the plaintiff supply a copy of the complete paper book to the learned counsel for the proposed defendant No. 6.

List on 26.08.2021.



IA. No. 792/2021 (u/O 39 R 1 & 2 CPC)

1. This is a suit for partition of the estate left behind by the parents. This application is filed by the plaintiff seeking an ex-parte injunction to restrain defendant No.1(the brother of the plaintiff) and defendant No. 2 (the son of defendant No.1) from selling, alienating or creating third party interest in respect of the suit properties. Other connected reliefs are also sought. The suit properties are spelt out in the plaint, which read as follows:-

“1. Property No.1: C-32, South Extension Part-II, New Delhi- 110049.

2. Property No.2: Ground Floor, 1st Floor and 2nd Floor of M-45, M Block, Main Market, Greater Kailash Part-I, New Delhi - 110048.

3. Property No.3: B1/64, Azad Apartments, Kalu Sarai, Sai Aurobindo Marg, New Delhi 110016.

4. Property No.4: M-52, Greater Kailash - I, Delhi - 110048.

2. As far as the property at C-32, South Extension Part-II, New Delhi is concerned, the matter was heard at length on 23.03.2021. Learned senior counsel appearing for defendants No.1 and 2 had made a statement in court that other than the transaction that has been entered into with Mr.Kailash Aggarwal, till the disposal of the application, defendant No.1 shall not sell, alienate or transfer the balance portion of the suit property, namely, to be constructed second floor, third floor and roof rights. On 13.04.2021, this court directed that the above statement made by learned senior counsel appearing for defendant No.1 on 23.03.2021 shall also bind the legal heirs of defendant No.1 who had passed away after 23.03.2021.



3. Learned senior counsel appearing for defendant No.2, on instructions, states that defendant No.2, who is also one of the LRs of the deceased defendant No.1, will remain bound by the statement made on 23.01.2021 and that defendant No.2 shall not sell or alienate without prior permission of the court any portion of the South Extension property (i.e. second floor, third floor and roof rights) other than the transactions which have already been carried out before. He also states that defendant No.2 shall be entitled to rent the property at market rent/rent above Rs. 3,500/- per month.

4. Coming to property at M-52, Greater Kailash - I, Delhi – 110048. It is an admitted case of the parties that this property was bought in 1964 in the name of the deceased defendant No.1. At that time, it is stated, defendant No.1 was 9 years old and did not have the means to have paid the sale consideration and hence the plaintiff claims rights in the said property. Defendants No.4 and 5 are supporting the case of the plaintiff.

5. In my opinion, the property was bought in 1964 in the name of the deceased defendant No.1. The plaintiff has now after more than 50 years chosen to challenge the title of defendant No.1. In my opinion, on account of the said delay, no interim orders can be passed regarding this property at this stage.

6. As far as the property at M-45, GK-1, New Delhi is concerned, this property was bought in the name of the mother of defendant No.1, namely, Smt.Sampuran Dhindsa. It is the case of defendant No.1(now LRs of defendant No.1) that the ground floor and the first floor of the suit property were gifted by the mother to defendant No.1 vide gift deed dated 11.03.2013. It is also stated that the late mother executed Wills dated 16.11.2012 and 03.01.2016 with regard to the said property in favour of



defendant No.1.

There are allegations made by learned senior counsel for the plaintiff and learned senior counsel for defendants No.4 and 5 stating that the mother in her lifetime had initiated proceedings challenging the gift deed dated 11.03.2013 by initiating proceedings under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act. Learned senior counsel for defendant No.2 has denied all these allegations pointing out that the plaintiff/defendants No.4 and 5 were fully aware about the execution of the gift deed and never objected. The Wills of the mother are also registered.

7. Regarding the property at the Azad Apartments, it is the case of the plaintiff that the said property was bought after the sale of the basement of property at M-45, GK-1, New Delhi from the consideration received. The property was bought in the name of the mother of defendant No.1 and defendant No.1. The case of defendant No.1 again is that the property had been bequeathed to him by his late mother as per the Will dated 03.01.2016.

8. After some arguments, learned senior counsel appearing for defendant No.2, on instructions, has submitted that defendant No.2 shall not sell or alienate the property M-45, GK-1, New Delhi and 50% share of the mother in the property at Azad Apartments without prior permission of the court. He clarifies that defendant No.2 shall be entitled to rent out the properties at market rent/rent above Rs.3,500/- per month. The above statement is taken on record.

9. Learned counsel appearing for the other legal heirs, namely, Mrs.Suniti Dhindsa and Mrs.Roshini Dhindsa Chawla adopt the statement of the learned senior counsel for defendant No.2.

10. The LR's of the deceased defendant No.1 and defendant No.2 shall



remain bound by their statements. They will also maintain accounts regarding all rental receipts from the aforesaid properties and will file the accounts annually in court.

11. With the above directions, the present application stands disposed of.

JAYANT NATH, J

MAY 5, 2021
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