



\$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 547/2022**

ANURADHA MITTAL

..... Plaintiff

Through: Mr. Joby P Varghese, Mr. Shahid
Akhtar & Ms. Ankita Gautam,
Advocates.

versus

DEEPAK KUMAR & ANR.

..... Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

09.09.2022

I.A. 14672/2022(Exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed of.

CS(OS) 547/2022

By way of the present suit, the plaintiff, who is the daughter of deceased Devendra Kumar Mittal and deceased Indira Rastogi, seeks relief of partition, declaration, permanent injunction and rendition of accounts in respect of properties as set-out in para 16 of the plaint against defendants Nos. 1 and 2, who are respectively the plaintiff's brother and the sister.

1. Mr. Joby P Varghese, learned counsel appearing for the plaintiff submits that the plaintiff's father passed away on 06.08.2015 and her mother passed away on 12.01.1997; both having passed away intestate.



2. It is submitted that the plaintiff's parents left the following immovable properties, which are subject matter of the present suit:
 - a) Property No.D-56, Freedom Fighters Enclave, Neb Sarai;
 - b) DDA Flat No. 3308, First Floor, D-3, Vasant Kunj;
 - c) BPL Flat in Housing Board of Gurgaon, *vide* Prov. Regn.No. GGN/BPL/HGB/22012;
 - d) BPL Flat in Housing Board of Gurgaon, *vide* prov. Regn.No. GGN/BPL/HGB/4740;
 - e) BPL Flat in Housing Board of Gurgaon, *vide* prov. Regn.No. GGN/BPL/HGB/9266;
 - f) BPL Flat in Housing Board of Gurgaon, *vide* prov. Regn.No. GGN/BPL/HGB/33291;
 - g) BPL Flat in Housing Board of Gurgaon, *vide* prov. Regn.No. GGN/BPL/PNB/33719; and
 - h) BPL Flat in Housing Board of Gurgaon, *vide* prov. Regn.No. GGN/BPL/HGB/549.
3. Counsel submits that the present position of the properties as listed above is the following:
 - i. The apartment in Vasant Kunj is presently in the use and occupation of defendant No.1;
 - ii. The property in Freedom Fighters Enclave, Neb Sarai is also in the possession of defendant No.1;
 - iii. The 06 Nos. BPL flats in Gurgaon, Haryana are believed to have been rented-out by defendant No.1.
5. Mr. Varghese submits that, as stated in paras 19 and 20 of the plaint, *defendant No. 2* is now alleging that their late father left behind Will



dated 29.03.2012 *inter-alia* in respect of the apartment at Vasant Kunj, bequeathing it to *defendant No. 1*. The plaintiff is however disputing the genuineness of the Will.

6. As claimed in para 36 of the plaint, the plaintiff states that she is in constructive joint possession of all the properties and accordingly fixed court fee has been affixed on the plaint.
7. Upon a *prima-facie* conspectus of the averments contained in the plaint and the submissions made, let the plaint be registered as a suit.
8. Issue summons on the suit, returnable 28th November 2022.
9. Upon the plaintiff taking steps within 10 days, let summons be sent to the defendants by all permissible modes. Let the summons indicate that the defendants are required to file written statement to the plaint within 30 days from the date of receipt of summons, alongwith affidavit of admission/denial of the documents filed by the plaintiffs. The plaintiff may file replication to the written statement within 30 days thereafter, alongwith affidavit of admission/denial of the documents filed by defendants.
10. List before the learned Joint Registrar for completion of pleadings, for admission/denial of documents and marking of exhibits on 28th November 2022.
11. List before court on 19th December 2022.

I.A. 14671/2022

12. By way of the present application under Order XXXIX Rule 1 and 2 CPC, the plaintiff claims temporary injunction and a direction to the defendants to maintain *status quo* in respect of the suit properties.
13. Issue notice on the application.



14. Upon the plaintiff taking steps within 10 days, let notice be sent to the defendants, by all permissible modes, returnable 28th November 2022.
15. Let reply to the application be filed within 30 days from service; rejoinder thereto, if any, be filed within 30 days thereafter; with copies to the opposing counsel.
16. Mr. Varghese submits that the plaintiff verily believes that defendant No. 1 is attempting to sell property bearing No. D-56, Freedom Fighters Enclave, Neb Sarai, New Delhi to a third party.
17. Mr. Varghese submits that even assuming the Will alleged to have been left by the father is to be acted upon, even so it is the undisputed position that the properties in Neb Sarai and the BPL Flats in Gurgaon are not covered by the Will.
18. In view thereof, the defendants are directed to maintain *status quo* in respect of the properties in Freedom Fighters Enclave, Neb Sarai, New Delhi and the 06 Nos. BPL Flats in Gurgaon, till the next date of hearing.
19. List before the learned Joint Registrar for completion of pleadings on 28th November 2022.
20. List before court on 19th December 2022.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 9, 2022/uj