



2025:DHC:2970



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

Date of decision:23.04.2025.

+ CS(OS) 309/2022

MONA LUTHRA & ANR.

.....Plaintiffs

Through: Ms. Sujata Kohli, Advocate (Through VC)

versus

SMT HARPREET KAUR MADAN & ANR.

.....Defendants

Through: Mr. Sumit Sinha, Advocate for D-2

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

I.A. 16128/2022 (Under Order VII Rule 11 CPC)

1. This is an application filed by the defendant no. 2 seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') in view of the pendency of TEST CAS. 53/2022 ('testamentary proceedings') between the parties.

2. This order is being passed in continuation of the order dated 22.07.2024 passed by this Court.

Submissions on behalf of the non-applicant/plaintiffs

3. Learned counsel for the non-applicant/plaintiffs' states that the plaintiffs have been compelled to institute the present suit in peculiar facts, since the plaintiffs apprehend that defendant nos. 1 and 2 dispute the title of



the testatrix late Smt. Usha Luthra in the subject property i.e., K1/14 First floor, Model Town, Delhi ('suit property').

3.1. She states that plaintiffs are in possession of the suit property and there is an apprehension that defendant nos. 1 and 2 may interfere with the possession of the suit property during the pendency of the testamentary proceedings.

3.2. She states that plaintiffs are claiming absolute title to the suit property to the exclusion of defendants on the basis of Will dated 30.03.2021, which is a subject matter of probate in TEST CAS. 53/2022.

3.3. She states that in the unlikely event, the Will dated 30.03.2021 is not upheld in the testamentary proceedings, plaintiffs are nevertheless entitled to undivided 1/4th share each in the suit property by operation of Section 15 of Hindu Succession Act, 1956 ('HSA, 1956'). She states that plaintiff and defendants are siblings and are therefore entitled to co-equal shares in the suit property as per intestate succession.

3.4. She states that in the testamentary proceedings case, the plaintiffs are respondents and one Sh. Vijay Aggarwal is the petitioner therein in his capacity as the named executor in the said Will. She states in the event, the said executor/petitioner fails to prosecute the testamentary proceedings, the plaintiffs herein would be left remediless.

3.5. She states that it is in these peculiar facts, the plaintiffs have been compelled to institute independent proceedings to assert their rights in the suit property as per Will dated 30.03.2021.

3.6. She relies upon the judgements of the Supreme Court to contend that the suit proceedings can be tagged along with the testamentary proceedings and the decision in the suit can await the outcome of the testamentary



proceedings.

Submissions on behalf of the applicant/defendant no. 2

4. In reply, learned counsel for the applicant/defendant no. 2 states that defendant no. 2 does not dispute that the testatrix late Smt. Usha Luthra was the sole and absolute owner of the suit property.

4.1. He states that defendant no. 2 also does not dispute that late Smt. Usha Luthra had absolute right to dispose of the suit property in any manner she so desired including by testamentary disposition.

4.2. He states that the genuineness of the Will dated 30.03.2021 is subject matter in TEST CAS. 53/2022 and defendant no. 2 herein has already filed her objections to the said Will, in those proceedings.

4.3. He states that defendant no. 2 undertakes that she will not interfere in the possession of the plaintiffs in the suit property and will maintain status quo until the final decision of the testamentary proceedings.

4.4. He states that defendant no. 2 also concedes that in case, the said Will is found to be invalid in testamentary proceedings, plaintiff nos. 1 and 2 and defendant nos. 1 and 2 will be entitled to undivided 1/4th share equally in the suit property, as per the rules of intestate succession.

4.5. He further states that he has no objection, if the plaintiffs herein are transposed as petitioners in TEST CAS. 53/2022 and they prosecute the said petition.

4.6. He states that the intent of the applicant/defendant no. 2 is to avoid multiple proceedings for the same relief.

Response on behalf of the non-applicant/plaintiffs

5. In response, learned counsel for the plaintiffs' states that in view of the aforesaid statements made by defendant no. 2, plaintiffs will be satisfied



if the suit is disposed of binding the defendant no. 2 to the aforesaid statements.

5.1. She states that defendant no. 1 is already ex-parte and to that extent, the suit can also be disposed of *qua* defendant no. 1 by making the interim order dated 01.06.2022 absolute.

5.2. She states that defendant no. 1 has also not filed any objections in the testamentary proceedings and therefore, it is presumed that she accepts the validity of the Will dated 30.03.2021.

Findings

6. The aforesaid submissions of the plaintiffs and defendant no. 2 are taken on record and the said parties bound down to the same. The present suit is disposed of *qua* defendant no. 2 taking the submissions of defendant no. 2 on record.

6.1. Defendant no. 2 is directed to file an affidavit of undertaking in terms of the statements recorded hereinabove, within two (2) weeks.

7. With respect to prayer 'i' of the plaint, which seeks declaration of title in the suit property, it is hereby directed that the issue of ownership will abide by the final outcome of testamentary proceedings. In case, the validity of the Will dated 30.03.2021 is upheld, plaintiff nos. 1 and 2 shall be owners of the suit property.

8. However, in case the in testamentary proceedings the Will dated 30.03.2021 is held to be invalid, the suit property will be the jointly owned property of plaintiffs and defendants as per section 15 of HSA 1956 with plaintiffs, defendant no. 1 and defendant no. 2 being entitled to undivided 1/4th share each in the suit property.

9. The interim order dated 01.06.2022 is hereby made absolute *qua*



defendant no.1 and defendant no. 2 and it is hereby directed that defendants will not interfere in the peaceful possession of the plaintiff until the final disposal of testamentary proceedings i.e., TEST. CAS. 53/2022.

10. The plaintiffs will be at liberty to move an appropriate application before the Court in testamentary proceedings i.e., TEST. CAS. 53/2022 for their transposition.

11. In the facts noted hereinabove, it is apparent that there is no dispute between the parties except with respect to the validity of the Will dated 30.03.2021. It is settled law that the validity of the Will has to be tested in the testamentary proceedings (where, its pending) and not a suit. Since testamentary proceedings i.e., TEST CAS. 53/2022 is pending qua the Will dated 30.03.2021, the validity of the Will has to be decided in the said proceedings as a testamentary court has exclusive jurisdiction. Keeping the suit pending is therefore superfluous and will only lead to multiplicity of proceedings (**Re: Amar Deep Singh v. State & Ors¹**)

12. With the aforesaid directions, the application stands allowed and the suit stands disposed of.

13. Pending applications stand disposed of.

14. All future dates stand cancelled.

MANMEET PRITAM SINGH ARORA, J

APRIL 23, 2025/rhc/ms

Click he/re to check corrigendum, if any

¹ 2005 (85) DRJ 179