

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

+ CS(OS) 701/2014 & IAs No.4481/2014 & 21729/2014

Decided on : 13.01.2015

IN THE MATTER OF:

SUNIL GOMBER

..... Plaintiff

Through Mr.Shiv Charan Garg and
Mr.R.K.Kashyap and Mr.Imran Khan
Advocates

versus

DR ANIL GOMBER & ANOTHER

..... Defendants

Through Mr.Asutosh Lohia, Ms.Saumya Kumar
& Mr.Satish Kumar, Advocates for D-1
Mr.N.K.Kantawala and Ms.Ritika G., Advocates
for D-2

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HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

IA No.21729/2014(by D-2 u/S 10 r/w 151 CPC)

1. The present application has been filed by the defendant No.2 praying *inter alia* that the proceedings in the suit may be stayed till the disposal of CS(OS) No.2036/2012, a suit filed by the said defendant prior in time for seeking partition of premises bearing No.F-3, Vijay Nagar, near Delhi University, New Delhi, owned by the mother of the parties, which is also a subject matter of this suit.

2. Counsel for the applicant states that the plaintiff has been impleaded as defendant No.1 in the aforecited suit and both the defendants therein have filed their written statements, whereafter the following two issues were framed on 19.3.2013 :

“(i) Whether the writing dated 27.12.2010 is the last will and testament of Lt.Smt.Usha Gomber? (OPD-1)

(ii) Whether the writing dated 29.2.2012 is the last will and testament of Lt.Smt.Usha Gomber? (OPD-2)”

3. It is submitted by the counsels for the defendants that though the plaintiff is a party in the aforesaid suit for partition filed by defendant No.2 in respect of the very same property, he has proceeded to file the present suit on 1.3.2014, which is not maintainable.

4. An advance copy of the present application was duly served on the plaintiff and the defendant No.1 through counsel. However, none had appeared for the plaintiff on 10.11.2014, when the application was listed before the court. As a result, notice was issued to the plaintiff, returnable for today. Despite the fact that the plaintiff was duly served through counsel well in advance, a reply has not been filed. Instead, learned counsel for the plaintiff seeks further time to file a reply.

5. Ample opportunity was granted to the plaintiff to file a reply to this application and therefore the said request is declined.

6. It is admitted by learned counsel for the plaintiff that the prayers made in the present suit relate to the property that is a subject matter of CS(OS) 2036/2012, that was instituted by the defendant No.2 prior in time. He does not deny the fact that his client is a defendant in the said suit and vide order dated 19.03.2013, issues were framed therein in respect of the two wills that have been mentioned by the plaintiff in the present suit. In such circumstances, there appears no justification for the plaintiff to have filed the present suit at a later date, particularly in light of the fact that in a suit for partition, all the coparceners become eligible for seeking their separate shares in the suit property, irrespective of whether they are plaintiffs or defendants in the suit.

7. At this stage, counsel for the plaintiff states that he does not have any objection to the disposal of the present suit on the condition that the plaintiff be given liberty to seek modification of the issues framed on 19.3.2013, in CS(OS) No.2036/2012.

8. Counsels for the defendants state that if the plaintiff does file an application for seeking modification of the issues that have been framed in the aforesaid suit, it would be for the court to examine the said request and pass appropriate orders in accordance with law.

9. In view of the aforesaid position, with the consent of the parties, the present suit is disposed of alongwith the pending applications with liberty granted to them to pursue their remedies in the suit instituted by the defendant No.2, for partition of the suit premises and pending adjudication.

JANUARY 13, 2015
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(HIMA KOHLI)
JUDGE