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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(OS) 2426/2001
AMRIT SINGH Plaintiff
versus
RANBIR SINGH AND ANR. Defendants
AND
+ CS(OS) 1145/2007 & IA No.4522/2011 (u/O 1 R-10 CPC).
GURDEEP SINGH Plaintiff
versus
SHRI RANBIR SINGH Defendant
AND
TEST.CAS. 65/2007, IA No.14482/2007 (u/O 39 R-1&2 CPC), IA
No.9435/2008 (u/O 39 R-4 CPC), IA No.9854/2011 (u/S 151 CPC)
and IA No.544/2012 (u/S 151 CPC).
GURDEEP SINGH Petitioner
versus
THE STATE Respondent

Counsels for Gurdeep Singh:-

Mr. Rajat Aneja, Ms. Rashmi Verma and Mr. Toyesh Tewari, Advs.

Counsels for Ranbir Singh:-

Mr. Kuldeep Sehrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.08.2016

1. The counsels for Shri Gurdeep Singh and the counsel for Shri Ranbir Singh have been heard.
2. The counsel for Shri Ranbir Singh states that he is also appearing for

Ms. Joginder Kaur and Ms. Gursaran Kaur.

3. The position which emerges is (i) Shri Amrit Singh being the father of Shri Gurdeep Singh, Shri Ranbir Singh, Ms. Joginder Kaur and Ms. Gursaran Kaur instituted CS(OS) No.2426/2001 against Shri Ranbir Singh for possession of portion of property no.D-94, Fateh Nagar, Delhi in possession of Shri Ranbir Singh on the ground that Shri Ranbir Singh had been allowed to reside therein as a son and the father Shri Amrit Singh no longer wanted Shri Ranbir Singh to continue residing in the property; (ii) Shri Ranbir Singh filed CS(OS) No.1244/2002 claiming that properties no.D-94, Fateh Nagar, Delhi, D-95, Fateh Nagar, Delhi and C-115, Jail Road, Delhi were all ancestral properties and he also had a share therein and *inter alia* seeking the relief of partition; (iii) Shri Amrit Singh died on 24th December, 2006 leaving besides Shri Gurdeep Singh, Shri Ranbir Singh, Ms. Joginder Kaur and Ms. Gursaran Kaur, another daughter Ms. Harvinder Kaur who has also since died and who was not married; (iv) according to Shri Gurdeep Singh the father Shri Amrit Singh has left a validly executed last Will dated 29th September, 2003; (v) Shri Gurdeep Singh has filed Test. Case No.65/2007 seeking probate of the said Will; (vi) CS(OS)

No.1145/2007 has been filed by Shri Gurdeep Singh against Shri Ranbir Singh to restrain Shri Ranbir Singh from alienating or encumbering or dispossessing Shri Gurdeep Singh from property no.C-115, Jail Road, Delhi and there is interim injunction to the said effect in the said suit; (vii) vide order dated 13th July, 2011 all the four proceedings were consolidated; (viii) vide subsequent reasoned judgment dated 10th October, 2012 CS(OS) no.1244/2002 has been dismissed for the reason of Shri Ranbir Singh, as per the averments in the plaint therein, not making out a case of the properties being ancestral and Shri Ranbir Singh having any share therein—the said order has attained finality; (ix) though as per the enhanced pecuniary jurisdiction of this Court CS(OS) No.2426/2001 and CS(OS) No.1145/2007 were to be transferred to the District Court but have been retained in this Court for the reason of being consolidated with Test. Case No.65/2007; (x) property no.C-115, Jail Road, Delhi is in the name of Ms. Amar Kaur being the mother of Shri Gurdeep Singh, Shri Ranbir Singh, Ms. Joginder Kaur & Ms. Gursaran Kaur but Shri Amrit Singh in his written statement in CS(OS) No.1244/2002 had claimed the said property also to have been acquired out of his own monies and he being the owner thereof and alternatively having

also become the owner of the said property under the Will of the said Ms. Amar Kaur; and, (xi) no issues have been framed in the suit till now.

4. Ms. Joginder Kaur & Ms. Gursaran Kaur are supporting Shir Ranbir Singh by filing objections in the Test. Case.

5. The counsel for Shri Gurdeep Singh states that though Advocate for Ms. Joginder Kaur & Ms. Gursaran Kaur was directed to supply copy of the objections filed to the Test. Case but the copy has not been supplied.

6. The counsel for Shri Ranbir Singh who is now appearing for Ms. Joginder Kaur & Ms. Gursaran Kaur also states that copy of the objections has already been supplied.

7. I am of the view that CS(OS) No.1145/2007 which is merely for the relief of injunction need not be proceeded with further. It is the settled position in law (see *Bachhaj Nahar Vs. Nilima Mandal* (2008) 17 SCC 491 and *Anathula Sudhakar Vs. P Buchi Reddi* (2008) 4 SCC 594) that in a suit for mere injunction no rights or title to the immoveable property can be decided. It is not in dispute that Gurdeep Singh is in possession of C-115, Jail Road, Delhi.

8. Accordingly, CS(OS) No.1145/2007 is decreed by passing a decree of permanent injunction in terms of the *ad interim* order dated 15th June, 2007 therein but with the clarification that the same shall be subject to the final outcome of CS(OS) No.2426/2001 and Test. Case No.65/2007.

9. Decree sheet in CS(OS) No.1145/2007 be prepared.

10. I am also of the view that once Shri Gurdeep Singh has filed reply to the objections preferred by Shri Ranbir Singh in the Test. Case, there is no need to grant any opportunity to Shri Gurdeep Singh to also formally file reply to the objections filed by Ms. Joginder Kaur & Ms. Gursaran Kaur in the Test. Case, which objections are same as the objections taken by Shri Ranbir Singh.

11. Accordingly, it is clarified that non-filing of reply by Shri Gurdeep Singh to the objections of Ms. Joginder Kaur & Ms. Gursaran Kaur in the Test. Case will not prejudice Shri Gurdeep Singh in any manner whatsoever.

12. On the pleadings in CS(OS) No.2426/2001 and Test. Case No.65/2007, the following issues are framed:-

- (i) Whether the document dated 29th September, 2003 is the validly executed last Will of Shri Amrit Singh? OP Gurdeep

Singh

- (ii) Whether Shri Amrit Singh on account of his age was incapable on 29th September, 2003 of making a Will? OP Ranbir Singh
- (iii) Whether the document dated 29th September, 2003 is a result of any coercion, pressure or undue influence exercised by Shri Gurdeep Singh over Shri Amrit Singh? OP Ranbir Singh
- (iv) If the above issues are decided in favour of Shri Gurdeep Singh, whether Shri Gurdeep Singh is entitled to recovery of possession of portion of property no.D-94, Fateh Nagar, Delhi in possession of Shri Ranbir Singh? OP Gurdeep Singh
- (v) If the above issue is decided in favour of Shri Gurdeep Singh, whether Shri Gurdeep Singh is entitled to any *mesne*/profits/damages for use and occupation and if so at what rate and for what period? OP Gurdeep Singh
- (vi) Relief.

13. It is clarified that no issue with respect to title to property no.C-115, Jail Road, Delhi or with respect to the Will of the mother Ms. Amar Kaur with respect to the said property in favour of father Shri Amrit Singh has

been framed as the counsel for Shri Ranbir Singh, Ms. Joginder Kaur & Ms. Gursaran Kaur states that according to the said persons also, the said property belonged to Shri Amrit Singh and the said persons also admit the Will of Ms. Amar Kaur in favour of Shri Amrit Singh.

14. No other issue arises or is pressed.
15. The parties to file their list of witnesses within 15 days.
16. Shri Gurdeep Singh to lead evidence first.
17. Shri Gurdeep Singh to file affidavits by way of examination-in-chief of all his witnesses except the witnesses which are to be summoned, within eight weeks.
18. Option has been given to the counsel for Shir Gurdeep Singh for recording of evidence before the Court Commissioner but he has declined.
19. List before the Joint Registrar on 6th October, 2016 for fixing the dates of trial.
20. Shri Ranbir Singh by IA No.9435/2008 (u/O 39 R-4 CPC) in Test. Case.65/2007 seeks vacation of the order dated 4th January, 2008 vide which the parties to the Test. Case have been restrained from parting with the possession of or creating any third party interest in respect of a industrial plot bearing no.1061, Phase-I HUDA, Bahadurgarh, Haryana.

21. The counsel for Shri Ranbir Singh states that the said plot is in the name of M/s. Gurunank Enterprises which is the sole proprietary of Shri Ranbir Singh and thus there is no question of grant of any stay with respect thereto.

22. The counsel for Shir Gurdeep Singh states that the said property also belonged to the father Shri Amrit Singh and is included and mentioned in the Will of which probate has been sought.

23. The counsel for Shri Gurdeep Singh however admits that the aforesaid plot is in the name of Shri Ranbir Singh but states that the consideration therefor had flown from the father Shri Amrit Singh.

24. This Court, in the Test. Case, is not to decide the title to the property and is to only decide on the validity of the document set-up as the Will.

25. Though the counsel for Shri Gurdeep Singh has contended that since the said property is mentioned in the Will, *status quo* with respect thereto also be continued but merely because a property is included in the Will would not entitle the propounder of the Will to seek interim orders with respect thereto, especially when it is admitted that the property is in the name of someone else, in this case in the name of Shri Ranbir Singh.

26. Shri Gurdeep Singh if desires to have the said property declared as the

property of the father, will have to initiate independent proceedings therefor.

27. I may record that the said property is also not subject matter of CS(OS) No.2426/2001.

28. Accordingly, the application is allowed by directing that the order dated 4th January, 2008 with respect to the aforesaid property shall cease to operate on 20th September, 2016, unless in any other proceedings which may be initiated by Shri Gurdeep Singh the said order is continued or a fresh order is made.

29. IA No.9435/2008 is disposed of.

30. It is informed that there is no interim order directing the parties to maintain *status quo* qua title and possession of properties no.D-94 and D-95, Fateh Nagar, Delhi.

31. Since the Test. Case is still pending and there is no dispute that the said properties belonged to the father Shri Amrit Singh, it is directed that neither party to deal in any manner whatsoever with properties no.D-94 and D-95, Fateh Nagar, Delhi and they are restrained from alienating, encumbering or parting with possession of or disturbing each other's possession thereof.

32. IA No.14482/2007, IA No.9854/2011 and IA No.544/2012 are disposed of by directing that whatever documents have come on record till now will be read in evidence if proved and in accordance with law and by dispensing with any further citation in the Test. Case.

RAJIV SAHAI ENDLAW, J

AUGUST 04, 2016
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