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

+ CS(OS) 366/2018 & I.A.9864/2018, 11833/2018, 16495/2018

GHANSHYAM KHOHAR

..... Plaintiff

Through: Mr.Prashant Bhardwaj, Mr.Gajanand  
Kirodiwal, Ms.Anuraj Tirthankar,  
Advocates.

versus

BHAGWATI DEVI & ORS.

..... Defendants

Through: Mr.Manu Nayar, Ms.Meenakshi  
Bhatia, Ms.Maitreyee Joshi,  
Ms.Radhika Arora, Advocates for  
defendants No.1 and 2.  
Mr.Rohit Bansal, Advocate for  
defendants No.3, 7 and 8.

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**ORDER**

% **10.12.2018**

**I.A.9864/2018, 11833/2018**

1. The plaintiff has filed this suit for partition of property bearing No.B-38, Sarvodaya Enclave, New Delhi on the averments that Satya Deo Gupta, owner of property bearing No. B-38, Sarvodaya Enclave, New Delhi-110017, died intestate on 14<sup>th</sup> April, 2016 and the suit property devolved upon the plaintiff and the defendants in equal shares according to the law of succession.
2. Defendants No.1 and 2 are contesting this suit on the ground that late Satya Deo Gupta left behind a registered will dated 28<sup>th</sup> October, 2014 in favour of defendants No.1 and 2 and they are entitled to the possession of the suit property from the plaintiff. Defendants No.1 and 2 filed probate petition bearing PC No.31/2018 titled as *Madan Mohan v. State* for seeking

Letters of Administration in respect of the will dated 28<sup>th</sup> October, 2014 which is pending before Dr. Ajay Gulati, Additional District Judge - 02 (South), Saket Courts and listed on 21<sup>st</sup> January, 2019. Defendants No.1 and 2 have instituted a civil suit bearing C.S. SCJ/823/2018 titled as ***Madan Mohan v. Ghanshyam Khohar*** against the plaintiff for seeking mandatory injunction for vacation of the suit property and for mesne profits which is pending in the Court of Ms.Mona Tardi Kerketta, JSCC cum ASCJ cum GJ (South), Saket Courts and listed on 08<sup>th</sup> January, 2019.

3. The plaintiff is seeking interim injunction for restraining the defendants from dispossessing him from the suit property without due process of law.

4. Learned counsel for defendants No.1 and 2 submit that defendants No.1 and 2 have invoked the due process of law by filing a suit for mandatory injunction and mesne profits against the plaintiff and defendants No.1 and 2 will not dispossess the plaintiff without due process of law already invoked by them.

5. In view of the statement of defendants No.1 and 2, the plaintiff's apprehension against dispossession from the suit property without due process of law is unwarranted.

6. In view of the legal proceedings initiated by defendants No.1 and 2, the interim order dated 30<sup>th</sup> July, 2018 is modified and the parties are directed to maintain status quo with respect to the title and possession of the suit property till any order is passed in the aforesaid legal proceedings initiated by defendants No.1 and 2. It is clarified that if any order is passed in the legal proceedings initiated by defendants No.1 and 2 against plaintiff, defendants No.1 and 2 would be at liberty to execute the same in accordance with law.

7. Learned counsel for defendants No.1 and 2 submits that the plaintiff

be directed to pay the interim mesne profits in respect of the suit property. Since defendants No.1 and 2 have filed a civil suit claiming mesne profits, no order is warranted in these proceedings.

8. Both the applications are disposed of in the above terms.

**CS(OS) 366/2018 & I.A.16495/2018**

9. The following issues arise for consideration in this suit and are hereby framed:

- (i) Whether late Satya Deo Gupta left behind a legal and valid will dated 28<sup>th</sup> October, 2014? OPD1/2
- (ii) Whether the plaintiff is entitled to partition of the suit property? If so, what are the shares of the respective parties in the suit property? OPP
- (iii) Relief.

10. The first issue as to whether the deceased left behind a will dated 28<sup>th</sup> October, 2014 is pending adjudication before the Court of Additional District Judge, Saket in Probate Case No.31/2018 and the finding of the Probate Court on this issue shall be binding on both the parties. In that view of the matter, learned counsels for the parties agree that this suit cannot proceed till the adjudication of the Probate Case No.31/2018.

11. This suit is disposed of with liberty to the plaintiff to revive it in the event of the plaintiff's succeeding in Probate Case No.31/2018. The pending application is disposed of.

12. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

**J.R. MIDHA, J.**

**DECEMBER 10, 2018**

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