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

Date of decision: 16.12.2023

+ CM(M) 151/2022 & CM APPL. 8186/2022

GURMIT KAUR & ANR. Petitioners
Through: Mr. Arun Batta and Mr. Vipin Gogia,
Advocates

versus

KULDIP KAUR & ORS. Respondents
Through: Mr. Suresh Sharma, Mr. Anil Rai
Ahuja and Mr. G. Sharma, Advocates
with Respondent No.3, 3A and 3C
present in person

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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):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 31.01.2022 passed by the Additional District Judge-03, South East District, Saket Court, New Delhi in CS DJ 255/20 ('Trial Court') whereby the Trial Court allowed the application filed by Respondent Nos. 3, 3A to 3C seeking permission to sell and alienate basement, ground floor and one of the flats in the building, which has been constructed on the property bearing No. 95, admeasuring 100 Sq. Yards situated at Rampuri



Main Road, Govindpuri, Kalkalji, New Delhi – 110019 ('suit property')

1.1. The Petitioners are the original plaintiffs and Respondents are the original defendants before the Trial Court.

1.2. For the sake of convenience, the parties are being referred to as per their rank and status before the Trial Court.

1.3. The civil suit has been filed by the plaintiffs against the defendants seeking a declaration that plaintiffs are the joint owners with defendants Nos. 1, 1A to 1D and 4 to the extent of 1/4th share each in the suit property; and further declaring the registered Will dated 05.06.1997, General Power of Attorney dated 29.04.2019, registered Sale Deed dated 05.08.2019 null and void; partition for dividing the suit property by metes and bounds; permanent injunction restraining the defendants from changing the nature of the suit property along with recovery of Rs 2,00,000/- per month towards compensation and damages for unauthorized use and occupation of the suit property till the date of handing the vacant and peaceful possession of the suit property.

2. The said application filed by the defendant nos. 3, 3A to 3C seeking permission of sale has been allowed by the Trial Court by its impugned order dated 31.01.2022 in furtherance of its earlier order dated 03.10.2020.

2.1. The Trial Court has granted the permission of sale conditionally, upon the terms set out at paragraph '12' of the impugned order.

3. This conditional permission granted by the Trial Court has been assailed by the Petitioners i.e., the plaintiffs in this petition. The predecessor Bench, while issuing notice on 15.02.2022 in this petition had observed that in addition to the four (4) conditions enlisted by the Trial Court in the



impugned order, a 5th condition as recorded at paragraph '7' of the said order in addition, can be imposed on the applicants (i.e., defendants no.3, 3A to 3C).

4. The matter has been taken up for hearing today and arguments have been addressed by the parties.

5. During the course of the hearing, learned counsel for defendant nos. 3, 3A to 3C states on instructions from defendant no. 3, 3A and 3C, who are present in Court that in exercise of the permission granted by the Trial Court, they will only sell and alienate basement, ground floor (G.F) and first floor (F.F) in the building constructed on the suit property.

6. After some arguments, the plaintiffs have consented to the order dated 31.01.2022 with additional safeguards to protect the suit property. Accordingly, the impugned order passed by the Trial Court is upheld. The defendant nos. 3, 3A, 3B and 3C are granted permission to sell and alienate basement, ground floor (G.F) and first floor (F.F) flats constructed in the building standing on the suit property on the following conditions: -

(i) The applicants/defendants no.3, 3A to 3C are permitted to sell, transfer or alienate the basement, ground floor and one of the flats of the suit property to any third person by making them aware of the pendency of the present suit and in this regard they will file an affidavit/undertaking of the said purchaser/transferee stating therein that they are informed about the pendency of the present suit and that they shall remain bound by the judgment/decree of this court to be passed in this case as per Section 52 of the Transfer of Property Act, 1882.

(ii) The details of such transactions to be mentioned in the said



affidavit/undertaking including the names of the parties, description of the instrument, sale consideration, etc. (copy of the documents be placed on record after their execution).

(iii) The said purchaser/transferee will also undertake not to create any further third-party interest in the suit property till the pendency of the present suit.

(iv) The applicants will also file an affidavit/undertaking to the effect that they will be bound by the aforesaid directions and that in the event the present suit is decreed and if it is held inter alia that the Will dated 09.06.1997 is invalid, the plaintiffs and the subsequent purchasers will give the share of the plaintiff which will be decided in the present suit or relating proceedings including execution.

(v) The subsequent purchaser(s) would be impleaded in the suit and be bound by any decree passed therein. The said subsequent purchaser will remain bound by the written statement filed by defendant nos. 3, 3A, 3B and 3C.

(vi) The pendency of this suit will be specifically recorded in the sale deed or lease deed to be executed by the defendant nos. 3, 3A, 3B and 3C in favour of the subsequent purchaser(s) /transferees.

(vii) The subsequent purchaser(s) /transferees will remain bound to handover the peaceful and vacant possession of the concerned flat to the Court; in case, the aforesaid civil suit is decided in favour of the plaintiffs.

7. It is directed that the vendor/transferor before executing the sale deed shall duly disclose to the vendee/subsequent-purchaser(s)/transferees the following facts and this will be recorded in the sale deed/transfer deed as a



recital:

(a) The civil suit bearing no. 255/2020 challenging the registered Will dated 09.06.1997 and sale deed dated 06.08.2019 is pending before the Court of Additional District Judge-03, South-East, Saket Courts, New Delhi.

(b) The permission to execute the sale deed with respect to flat has been granted by the Courts conditionally vide impugned order dated 31.01.2022 passed by the Trial Court and by the High Court vide order dated 16.12.2023 passed in CM(M) 151/2022.

(c) The copies of the legal proceedings and the orders passed by both the Courts have to be duly provided by the vendor/transferor to the vendee/subsequent-purchaser(s)/transferees.

8. With the aforesaid directions and modifications, which are acceptable to the parties, the impugned order dated 31.01.2022 is upheld.

Directions for trial

9. Learned counsel for the plaintiffs and defendant nos. 3, 3A, 3B and 3C state that the pleadings in the suit are complete and the matter is listed before the Trial Court on 21.12.2023 for framing of issues.

10. The learned counsel for the plaintiffs states that the primary issue arising for consideration between the parties is:

“Whether the Will dated 05.06.1997, registered on 09.06.1997, was executed by late Mr. Amar Singh and is genuine?”

10.1. He states that on this issue, the evidence will be first led by defendant nos. 1, 2, 3, 3A, 3B and 3C before the Trial Court since they have propounded the said Will and are relying upon the said Will. He states the plaintiffs dispute the genuineness of this Will. He states it is the stand of the



plaintiffs that the suit property has devolved upon the Class-I legal heirs.

10.2. He states that, if, the aforesaid issue is decided in favour of the plaintiffs then it is needless to state since the plaintiff nos. 1 and 2, late Malkit Singh and defendant no. 4 are the Class-I legal heirs of late Shri Amar Singh, therefore, they all will become entitled to 1/4th share each in respect of the suit property. He states that the plaintiffs will also be entitled to a final decree of partition including possession of the suit property.

10.3. He states that in addition to being declared as owners of the 1/4th undivided share in the suit property, the plaintiffs would also be entitled to claim of mesne profits against defendant nos. 1, 2, 3, 3A, 3B and 3C, jointly and severally.

11. In reply, learned counsel for defendant nos. 3, 3A, 3B and 3C states that he has no objection to the submissions made on behalf of plaintiffs. He states defendant nos. 1, 2, 3, 3A, 3B and 3C will lead the evidence first to prove the genuineness of the registered Will dated 05.06.1997.

11.1. He states that in the event, the issue no. 1 is decided against the defendant Nos. 3, 3A, 3B and 3C, the said defendants will succeed to the 1/4th share of late Shri Malkit Singh as they are subsequent purchasers.

12. Accordingly, the learned Trial Court is directed to frame the issues on the next date of hearing i.e., 21.12.2023 keeping in view the aforesaid submission of the parties and set the matter down for trial.

13. It is directed that defendant nos. 3, 3A, 3B and 3C alongwith defendant nos. 1 and 2 will be leading evidence first on the issue with respect to the genuineness of the said Will dated 05.06.1997 registered on 09.06.1997.



14. This Court finds merits in the submissions of the counsel for the plaintiffs that if the issue of genuineness of the Will is decided against the defendants and in favour of the plaintiffs; then the preliminary decree of partition in favour of the Class-I legal heirs of late Shri Amar Singh is bound to follow with all consequential reliefs.

15. With the aforesaid directions and with the consent of the parties, the petition stands disposed of.

16. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 16, 2023/rhc/ms

Click here to check corrigendum, if any