



\$~15

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

+ **CS(OS) 654/2023 & I.A. 20536/2023**

PAWAN KUMAR SHARMA

.....Plaintiff

Through: Mr. Kameshwar Mishra, Advocate.

versus

SUNIL KUMAR SHARMA & ANR.

.....Defendants

Through: Mr. Shekhar Dasi, Md. Talha and Mr. Ayush Dassi, Advocates for D-1.
Mr. Mukul Girdhar, Advocate for D-2
along with D-2 in person.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **30.08.2024**

I.A. 4383/2024 (Application under Order VII Rule 11 CPC)

1. This is an application filed by defendant No. 1 under Order VII Rule 11 read with Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC').
2. Learned counsel for the applicant/defendant no. 1 states that the present suit has been filed by the plaintiff seeking partition of the estate of the grandfather of the parties herein, i.e. late Sh. Sher Singh Sharma. He states that however, the present suit is without any cause of action as there is no dispute between the parties with respect to the partition of the estate of late Sh. Sher Singh Sharma.
- 2.1. He states that late Sh. Sher Singh Sharma had executed a registered Will dated 18.12.2003 bequeathing his entire estate to the plaintiff and



defendant nos. 1 and 2. He states that late Sh. Sher Singh Sharma passed away on 13.01.2009 and, thereafter, the parties herein executed a written family settlement dated 06.04.2010 ('MOFS dated 06.04.2010'), whereby the estate of late Sh. Sher Singh Sharma was partitioned by metes and bounds between the parties. He states that the immovable estate of late Sh. Sher Singh Sharma is accurately enlisted in serial no. (i) to (vii) under paragraph no. 2 of the plaint. He states that acting upon the MOFS, plaintiff, defendant no. 1 and defendant no. 2 are in the actual physical possession of their separate portions of the immovable estate.

2.2. He states that parties have been exercising proprietary rights *qua* their separate portions/properties inasmuch as the properties have been let out individually from time to time to various tenants and rents have been collected in the individual names.

2.3. He states that a perusal of the plaint shows that at paragraph no. 13, the plaintiff has categorically admitted the execution of MOFS dated 06.04.2010 and is in fact seeking implementation of the very said agreement in this suit. He states that it is the stand of the defendant no. 1 that the MOFS dated 06.04.2010 is binding on defendant no. 1 and he is not interfering in plaintiff's possession of the properties, which have fallen to the share of plaintiff as per the said MOFS. He states that therefore, in view of these facts, the suit is liable to be rejected under Order VII Rule 11 of CPC and/ or dismissed under Order XII Rule 6 of CPC.

3. Learned counsel for defendant No. 2 as well states that defendant no. 2 is bound by the MOFS dated 06.04.2010 and defendant no. 2 does not intend to interfere in any manner with plaintiff's possession of the property which has fallen to the share of plaintiff as per MOFS dated 06.04.2010. He



as well states that in view of this admitted possession, the present suit deserves to be dismissed.

4. Learned counsels for defendant nos.1 and 2 state that plaintiff has received 50 % share in properties enlisted at serial nos. (i), (ii) and (iv) of paragraph no. 2 of the plaint and 200 sq. yds. in property enlisted at serial no. (iii) of paragraph no. 2. They state that properties stand equitably distributed.

5. In response to the aforesaid submissions of the learned counsel for the plaintiff states that since defendant nos. 1 and 2 are admitting that they remain bound by MOFS dated 06.04.2010 and undertake not to interfere in the exclusive possession of the plaintiff, therefore, the plaintiff has no objection, if the suit is disposed of taking the said statements on record. He states that the plaintiff admits the registered Will dated 18.12.20003 and MOFS dated 06.04.2010.

6. In view of the above, the present suit is hereby disposed of binding the plaintiff, defendant nos. 1 and 2 to the terms of MOFS and holding that the immovable estate of late Sh. Sher Singh Sharma stands partitioned between the plaintiff, defendant nos. 1 and 2 in terms of the MOFS. It is however clarified that this order cannot be relied upon by the parties to avoid their obligation in law to register the document i.e., MOFS dated 06.04.2010 and pay appropriate stamp duty thereon, if required in law.

7. With the aforesaid directions, the application stand allowed.

CS(OS) 654/2023

8. In view of the order passed in I.A. 4383/2024, the present suit stands disposed of. All the pending applications stand disposed of. Interim order dated 17.10.2023 is hereby vacated.



9. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

AUGUST 30, 2024/MR/AKT

[Click here to check corrigendum, if any](#)