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

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Reserved on: 26th November 2024

Pronounced on: 21st February, 2025

+ **FAO 366/2024 & CM APPL. 68859/2024 (stay)**

PRATAP SINGH TANWAR

.....Appellant

Through: **Ms. Gita Dhingra and Mr.
Amit, Advocates.**

versus

PARAMJIT SINGH TANWAR & ORS.

.....Respondents

Through: **Ms. Divya Kumar
Kaushik, Advocate for R-1 to 3.**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This is an appeal against the order dated 19.11.2024, passed by the learned District Judge-03, Patiala House Courts in CS No. 4252/2024, titled "Pratap Singh Tanwar Vs. Paramjit Singh Tanwar & Ors.", whereby, application under Order 39 Rule 1 & 2 CPC filed by the appellant seeking interim injunction was dismissed.

2. Appellant assailed the impugned order primarily on the ground that the learned Trial Court erred in dismissing the injunction application despite the existence of a registered Will dated 07.04.1997, executed by late Sh. Bhoop Singh Tanwar. The learned counsel for the appellant contends that the Will clearly bequeathed the



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Southern portion of the suit property bearing No. WZ-1571, Nangal Raya, New Delhi to him and the Sale Deed dated 30.08.2005 executed subsequent to in favour of respondent No. 2 is fraudulent, null and void.

FACTUAL BACKGROUND:

3. The appellant, respondent No. 1 and respondent no. 5 are the real brothers, while respondent No. 2 is the wife of respondent No. 1.

4. The suit property was originally owned by late Sh. Bhoop Singh Tanwar, who passed away on 24.07.2006, leaving behind his widow, sons (appellant, respondent No. 1 and respondent no. 5) and two daughters as his legal heirs.

5. During his lifetime, Sh. Bhoop Singh executed a Will dated 07.04.1997, bequeathing all his properties among his two sons i.e., appellant and respondent No.1 and grandson namely Sh. Pradeep Tanwar son of respondent No.5.

6. As per the said Will, appellant was given southern portion of the property, whereas, respondent No. 1 was given northern portion of the suit property.

7. The appellant asserts that, respondent No. 1, taking undue advantage of the fact that appellant was residing in northern portion despite being allotted southern portion, fraudulently obtained a Sale Deed from their father in favour of his wife, respondent No. 2 on 31.08.2005.

8. Subsequently, on 21.11.2006, respondent No. 1 executed another sale deed transferring the Northern portion of property in favour of respondent No. 2.



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9. Respondents No. 2 allegedly obtained an equitable mortgage by fraudulently hypothecating the property to respondent No. 4 (Bank), which is now attempting to auction the property due to non-payment of loan.

10. Feeling aggrieved, the appellant filed a suit for partition, declaration and permanent injunction against the respondents along with an application under Order 39 Rule 1 & 2 CPC, seeking to restrain the respondents from creating any third party interest in the suit property during the pendency of the suit.

11. The learned Trial Court upon hearing the arguments, dismissed the application under Order 39 Rule 1 & 2 CPC filed by the appellant vide order dated 19.11.2024, which is now under challenge in the present appeal.

12. Learned counsel for the appellant submits that after execution of the Sale Deed by late Sh. Bhoop Singh Tanwar in favour of respondent No. 2 on 31.08.2005, the Will dated 07.04.1997 loses its sanctity and therefore respondent No. 1 had no right to execute the Sale Deed dated 21.11.2006 of northern portion of the property to respondent No. 2 and that being so, respondents No. 2 also has no right to obtain loan against the said property by creating mortgage with respondent No. 4.

13. *Per contra*, the learned counsel for the respondents No. 1 & 2 has submitted that by virtue of the Will dated 07.04.1997, Sale Deed dated 31.08.2005 executed by late Sh. Bhoop Singh in favour of respondent No. 2 and further Sale Deed dated 21.11.2006 executed by respondent No. 1 in favour of respondent No. 2, the entire property



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now belongs to respondent No. 2, and therefore, appellant has no right or title over the property and thus learned Trial Court has rightly dismissed the application under Order 39 Rule 1 & 2 CPC.

14. This Court has carefully perused the impugned order, the pleadings and the submissions made by the parties. Admittedly, the Will dated 07.04.1997 bequeaths the property between the appellant and respondent No. 1. As per the said Will, the southern portion of the property was to go to the share of the appellant while the northern portion was to fall into the share of respondent No. 1.

15. Even though, appellant claims that he has been residing in the northern portion of the property, such portion did not fall to his share as per the Will of the testator and therefore appellant has prima facie no right over the northern portion of the property in terms of wishes of the testator. Mere possession in the northern portion of the property would not confer any right or title in favour of the appellant.

16. The Will comes into operation only after the death of the testator. During his life time, testator can always change his mind and execute a new Will after revoking the previous Will. Equally, he is free to transfer the property owned by him to any person. By virtue of the sale deed dated 31.08.2005, late Sh. Bhoop Singh Tanwar transferred the southern portion of the property in favour of respondent no. 2, which he earlier bequeathed in favour of appellant. There was nothing which prevented late Sh. Bhoop Singh Tanwar to execute the sale deed of southern portion of the property to respondent No. 2. The question as to whether such sale deed is a forged and fabricated document, can be determined only after the evidence is led



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by the parties. However, the Sale Deed 31.08.2005, prima facie proves that late Sh. Bhoop Singh Tanwer transferred the southern portion of the property to respondent No. 2.

17. The transfer of part portion of the property to respondent No. 2 shall not invalidate the whole Will executed by the Testator. The Will at best may become inoperative *vis-a-vis* the property subsequently transferred by the testator. Therefore, it cannot be said that the Will has become inoperative by the execution of the Sale Deed dated 31.08.2005 by late Sh. Bhoop Singh Tanwar or that for this reason, respondent No. 1 could not have transferred the northern portion of the property in the name of respondent No. 2.

18. The principles governing the grant of interim injunctions require the plaintiff to establish a prima facie case, balance of convenience and irreparable loss. In the present case, appellant has failed to establish prima facie case, as the Sale Deed dated 31.08.2005 executed by late Sh. Bhoop Singh Tanwar during his lifetime, revokes the Will only to the extent, it bequeaths southern portion of the property in the name of the appellant. Since the Will bequeaths the northern portion of the property to respondent No. 1, there is no impediment why respondent No. 1 could not have transferred the said portion after the death of late Sh. Bhoop Singh Tanwar in favour of his wife (respondent No. 2). The balance of convenience is in favour of the respondents, inasmuch as, the registered Sale Deed dated 31.08.2005 in respect of the southern portion of the property is in favour of respondent No. 2. No irreparable loss would be suffered by the appellant as he is free to challenge the due execution and



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genuineness of the sale deed.

19. Thus, the appellant has failed to establish the existence of a prima facie case, balance of convenience and irreparable injury.

20. In view of the above, this Court finds no infirmity or illegality in the impugned order dated 19.11.2024 passed by the learned Trial Court.

21. Accordingly, appeal is dismissed and the impugned order dated 19.11.2024 is upheld.

22. No order as to cost.

RAVINDER DUDEJA, J.

February 21, 2025

RM/r/n