

Shakuntla Devi Vs. Manoj Kumar

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Court : Delhi

Decided On : Aug-01-1995

Reported in : 1995IVAD(Delhi)238; 60(1995)DLT358

Judge : Devinder Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

Appeal No. : Interim Application No. 7228 of 1994 and Suit No. 1811 of 1994

Appellant : Shakuntla Devi

Respondent : Manoj Kumar

Advocate for Pet/Ap. : M.P. Nandrajyog,; H.A. Ahmadi,; S. Poddar and;

Judgement :

Devinder Gupta, J.

(1) Plaintiff is the widow of late O.P. Gupta who owns the suit property. It is her case that O.P. Gupta died issueless on 28.2.1985 and on his death she being the only heir has inherited the entire property and is the absolute owner of the same. Out of her wedlock with O.P. Gupta, no children were born. There was nobody else to stay with her. She, accordingly allowed seven of her nephews to reside with her in the suit property. Defendants 1 & 2 are her nephews, out of seven who are also residing in the property. It is also alleged that Defendants No. 1 has set

up a Will, alleged to have been executed by late O.P. Gupta on 30.9.1981 and under if it is claimed by defendant No. 1 that the plaintiff has only life interest in the property and has also claimed that half of the front portion of the house has been bequeathed to him and the rear half has been bequeathed to defendants 2 & 3. Defendant No. 1 has started troubling her and harassing her. Defendant No.1 has no right to occupy the suit property and since the plaintiff is residing in the suit property there is every possibility of defendant No.1 causing physical harm to the plaintiff. In this background, the plaintiff in the suit has claimed a decree declaring her to be the sole owner of the property and consequential relief for mandatory injunction against defendant No.1 for removal of the household goods from the front portion of the property and restraining defendant No. 2 from claiming himself to be the owner of the half portion of the property. In addition she has also claimed a decree for damages. Along with the suit, an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure has also been filed wherein temporary injunction has been claimed restraining Defendant No.1 from entering upon or residing in any part of the property.

(2) The suit is contested by defendant No.1, who has alleged that the deceased O.P. Gupta executed a Will dated 30.9.1981 bequeathing his property and under the Will the plaintiff has only a right of use and occupation and of raising loan up to the extent of Rs.10,000.00 on the security of the property. Defendant No.1 has in detail narrated the manner in which bequest has been made as regards the property by the deceased. I have heard the learned Counsel for the parties and gone through the record.

(3) In so far as application under Order 39 Rules 1 & 2 of the Code is concerned I do not find any prima facie case worth the name having been made out for the grant of temporary injunction restraining defendant No.1 from entering upon or residing in the suit property.

(4) It is the plaintiff's case that defendant No.1 has been residing in the property. In para 10 of the plaint it is alleged that license granted to defendant No.1 to reside in the property was revoked by her whereupon defendant No.1 was called upon to move out of the property and remove his clothes and other personal effects from

the property. The fact that defendant No.1 is residing in the property is not in dispute. It is the plaintiff, who is challenging the legality and validity of the Will, which is duly registered. The question as regards title will have to be decided ultimately in the suit on evidence. For the purpose of interim relief it cannot be said that defendant No.1 has absolutely no right to stay in the property for that it has to be held that there is no prima facie case in plaintiff's favor and there is no question of any irreparable loss or injury being caused to the plaintiff in the event of injunction not being allowed. Balance of convenience is also not in favor of grant of injunction in such like suit. Application accordingly is dismissed. However, while dismissing the application it is directed that defendant No.1 shall not transfer, alienate or otherwise part with or encumber the property or any part thereof in any manner whatsoever during pendency of the suit. Application stands disposed of. Application disposed of.

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