

Kanika Bhatia vs Vijod Bhatia & Anr on 25 January, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 44/2019

KANIKA BHATIA

Through:

Ms. Smarika Azad, Adv.

..... Plaintiff

Versus

VIJOD BHATIA & ANR.

Through: None.

..... Defendants

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 25.01.2019 IA No.1207/2019 (u/S 149 CPC)

1. The deficiency in court fees be made up by the next date of hearing. No further time can be granted to the plaintiff.

2. If the deficient court fees is not filed, the Registry to put up the matter before this Court.

3. The application is disposed of.

CS(OS) 44/2019 & IAs No.1205/2019 (u/O XXXIX R-1&2 CPC), 1206/2019 (u/O II R-2(3) CPC) & 1208/2019 (for condonation of 2 days delay in filing)

4. The plaintiff has sued for (a) declaration of ownership rights in immoveable property; (b) for possession of one floor of the said property, claiming 1/3rd share in the property; (c) for permanent injunction restraining the defendants from dealing with the property; and, (d) for declaration that the Will of common predecessor is null and void.

5. In the title of the suit, the suit is claimed to be for partition also; however in the prayer paragraph, there is no relief sought of partition. Without the plaintiff suing for partition, the plaintiff cannot be entitled to possession.

6. The suit is misconceived and not maintainable and the plaint is liable to be rejected.

7. Even otherwise, once a challenge to the Will has been made in the suit, according to the plaintiff also, several other persons besides the two defendants would have a share in the property and who

have not been impleaded as defendants to the suit.

8. The plaintiff, along with her documents has filed a copy of the legal notice got issued by the defendants to the plaintiff seeking possession of the portion of the property in possession of the plaintiff. In the said legal notice, the defendants have referred to an earlier suit for partition filed by the plaintiff and the number of which is given as Suit No.440/2014 and which suit is claimed to have been dismissed for non-prosecution but which, till the date of issuance of the notice, was still in lurch.

9. If the plaintiff has earlier filed suit for partition, then the present suit would not be maintainable.

10. The counsel for the plaintiff, on enquiry first states that the plaintiff has earlier not filed any suit. However, on her attention being drawn to page 5 of the documents, she states that the suit was not for partition but for some other reliefs. Upon being asked to show pleadings in the said suit, she states that the plaintiff is not in possession of any papers and now again states that the plaintiff did not file any suit.

11. It appears that the plaintiff is not aware of her own case and, as per her whims and fancy, from time to time files suits.

12. If the plaintiff has earlier filed a suit and which is not denied in the plaint, the present suit would again be not maintainable.

13. The counsel for the plaintiff is of no assistance.

14. It is deemed appropriate to grant an opportunity.

15. List on 15th February, 2019.

RAJIV SAHAI ENDLAW, J.

JANUARY 25, 2019 „bs ..