
(1991) 09 DEL CK 0031
In the Delhi High Court
Case No : Suit No. 3464 of 1990

Brij Rani

APPELLANT

Vs

Tripati Sharma and Others

RESPONDENT

Date of Decision : 23-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1991) 45 DLT 601

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : O.P. Malviya, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) This is a suit for partition of the property by metes and bounds fully shown in Annexure "A" annexed to the application filed under Order 39 Rules I and 2 of the Code of Civil Procedure.

(2) Brief facts leading to the filing of the present suit are as under : Plot No. 42, Block J-3, measuring 160 square yards, situated at Rajouri Garden, New Delhi shown by red lines in the plan Annexure "A" annexed with the application was purchased by one Dina Nath Sharma and Smt. Shanti Devi. The said property was thereafter divided into two equal shares by said Shri Dina Nath and Smt. Shanti Devi. The property measuring 80 square-yards shown in the site-plan Annexure-"A" covered by red lines fell to the share of Shri Dina Nath. The said Shri Dina Nath breathed his last vide death certificate Ex. Public Witness 1/A on 19th September, 1986 leaving behind the plaintiff and the defendants as the legal heirs. Hence each one of them is entitled to 1/4th share in the above said property. Shri Dina Nath Sharma raised construction on the said plot of land which consisted of two rooms, W.C., a Court-yard, Verandha and bath room. Shri Dina Nath died intestate inasmuch as he did not execute any will. Defendant no. 1 has been threatening to transfer and alienate the said property after the death

Shri Dina Nath without the consent of the plaintiff and the other defendants i.e. defendants nos. 2 and 3. The defendants are in joint and constructive possession over the said property. The plaintiff wants that she be given her 1/4th share in the said property being one of the legal heirs of the deceased Shri Dina Nath. The defendants are not ready for the same. Hence arose the necessity for the presentation of the present suit.

(3) plaintiff has examined herself as PW1. She has reiterated all the above averments, through her statement on oath. The plaintiff, besides the above has placed on record the death certificate with regard to the death of Shri Dina Nath vide Ex.PW1/A. The site plan of the disputed property is Annexure "A". There is nothing to rebut the above testimony as the defendants have not put in any contest. Hence the plaintiff is entitled to 1/4th share in the property shown by red lines to Annexure "A" i.e. the site-plan annexed with the application under Order 39 Rules 1 and 2. In the circumstances stated above a preliminary decree for partition of the suit property is hereby passed, *ex parte* against the defendants. The plaintiff is held entitled to 1/4th share in the said property. Let a preliminary decree be prepared accordingly. The defendants are hereby restrained from selling, transferring alienating or disposing of the said property.

(4) Shri O.N. Trisal Advocate, 176-H, Nanakpura Moti Bagh-II New Delhi is hereby appointed as Local Commissioner. He would visit the suit property i.e. plot No. 42, Block-J-3, Rajouri Garden, New Delhi and would suggest the mode of partition with regard to the said property. He would demarcate the 1/4th share of the plaintiff and that of each of the defendants in a site plan prepared by him. He would get Rs. 2000.00 (rupees two thousand) as his fee.

(5) The Local Commissioner is directed to submit his report within three months from today.