

**In the Court of Sumukhi, Civil Judge Junior  
Division, Amritsar**

**CNR No.**  
**PBAS020031432022**

**Case No. CS/2167/2022**



**Presented on : 18-07-2022**

**Registered on : 19-07-2022**

**Decided on : 10.03.2023**

**Pawan Kumar Vs. Raj Kumar Saraf**

**Application under Order 39 Rule 1 and 2 read with section 151  
CPC.**

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**Present:** Sh. SK Dhawan, Adv. Counsel for plaintiff.  
Sh. Amit Monga, Adv. counsel for the defendant.

**Order:-**

In pursuance of notice under Order 12 Rule 8 CPC,  
statement of defendant Raj Kumar has been recorded to the effect that he  
has brought the original Will today in the Court and it will be produced  
by him at the time of evidence as and when directed. Now to come up on  
for consideration on the application under Order 39 Rule 1 and 2 read  
with Section 151 CPC after lunch.

**Date of Order: 10.03.2023**

*Arun Kumar, Stenographer G-II*

**(Sumukhi),  
CJJD/RC/ASR.  
UID NO. PB0379.**

Present: Sh. SK Dhawan, Adv. Counsel for plaintiff.  
Sh. Amit Monga, Adv. counsel for the defendant.

1. File again taken up after lunch. This order of mine shall dispose of the application under order 39 rules 1 and 2 read with section 151 CPC filed on behalf of plaintiff/applicant. It has been submitted that originally Vasdev Saraf was the owner of the suit property as per registered partition deed executed between Brij Mohan, Vasdev Saraf, Murari Lal and Smt. Kamla Devi Wd/o of Seth Bal Mukand, registered on 03.05.1958. The plaintiff and defendant are the sons of late Sh. Vasdev Saraf who died on 15.12.2016. He executed the registered Will dated 25.07.2012 in favour of plaintiff qua first floor and ground floor and second floor of the said property came to the share of the defendant. As per the said registered Will, plaintiff was in possession of rear portion of first floor and the front portion was in possession of Vasdev Saraf but after his death, the plaintiff became owner in possession of first floor by making the payment of electricity charges which was installed in his name and the plaintiff is running the business of Bardana in the front side and residing therein being full fledged owner. Therefore, he has sought for relief of injunction against the defendant from alienation/selling out the suit property.

2. On the other hand, defendant has filed the written statement by taking preliminary objections that the present suit is not maintainable, the plaintiff has not come to the Court with clean hands and suppressed and concealed the true and material facts, the plaintiff is estopped by his own acts and conduct from filing the present suit, no cause of action has ever arisen in favour of the plaintiff, the present suit is an abuse of process of the Court etc. On merits, the defendant has specifically admitted the execution of Will dated 25.07.2012. All the remaining averments are denied parawise and prayer has been made for dismissal of the same.

3. I have heard the rival contentions of both the parties and have perused the case file with due care and circumspection.

4. The perusal of the file shows that vide present suit, the plaintiff has sought for declaration to the effect that the plaintiff is owner in possession of the suit property and for permanent injunction. In order to strength his case, plaintiff has produced on record documents copy of his Adhar Card, copy of registered partitioned deed, copy of non-Judicial stamp, copy of Will dated 25.07.2012, copy of death certificate of Vasdev Saraf, original site plan, electricity bill etc. On the other hand, defendant has not produced any document.

5. The plaintiff has stated that as per the registered partitioned deed dated 03.05.1958, Vasdev Saraf became owner of the suit property bearing no. 389/III-6 (Old) and 181 (New). Before his death on 15.12.2016, he executed a registered Will dated 25.07.2017 dividing floors of the building between the plaintiff and defendant. The perusal of the copy of Will shows that Vasdev Saraf was also having four daughters who have not been made party to the present suit. Both the parties have stated that they are in possession of their respective floors as per the Will. At this stage, plaintiff is only seeking relief of restraining the defendant from alienation of the suit property. Remaining objections are matter of evidence. Therefore, only for the purpose of preserving the suit property and to avoid the multiplicity of the litigation, both the parties are directed to maintain status quo qua alienation of the suit property. In view of the above said discussion, the application under Order 39 Rule 1 and 2 read with Section 151 CPC stands allowed and disposed off. This order will not interfere in any bank proceedings or in any execution proceedings.

6. However, any observation made while disposing of this application shall have no bearing on the merits of the main case.

**Pronounced**  
**Dated: 10.03.2023**

Arun Kumar, Steno-II

**(Sumukhi)**  
**Civil Judge(Jr. Division),**  
**Amritsar**

Present: Sh. SK Dhawan, Adv. Counsel for plaintiff.  
Sh. Amit Monga, Adv. counsel for the defendant.

Arguments heard. Vide my separate order of even date, application under order 39 rule 1 and 2 CPC stands allowed and disposed off. In view of the above said order and before framing of issues, the plaintiff is directed to clarify about the non-joinder of the daughters of Vasdev Saraf for 09.05.2023.

**Pronounced**  
**Dated: 10.03.2023**

Arun Kumar, Steno-II

(Sumukhi)  
Civil Judge(Jr. Division),  
Amritsar