

1.

Pawan Kumar Saraf Vs. Raj Kumar Saraf

IN THE COURT OF SUPREET KAUR,
ADDL.CIVIL JUDGE (SENIOR DIVISION), AMRITSAR.
(UID NO.PB-00370)

CNR No.
PBAS020031432022

Case No. CS/2167/2022

IA/01/2024



Application Presented on : 15-01-2023

Application Registered on : 02-07-2024

Application Decided on : 02-07-2024

Pawan Kumar

.....Applicant/Plaintiff

Versus

Raj Kumar

.....Respondent/Defendant

Application under Section 151 CPC

Present: Sh.S.K.Dhawan Advocate, counsel for applicant/plaintiff.
Sh.Amit Monga Advocate, counsel for the respondent/defendant

O R D E R:

This order of mine shall dispose of an application under Section 151 CPC filed by the applicant/plaintiff for allowing the applicant/plaintiff to proceed with the suit without impleading all the legal heirs of deceased Vasdev Saraf.

2. It is stated in the application that the applicant/plaintiff has filed the suit against the respondent/defendant for declaration to the effect that the applicant/plaintiff is owner in possession of first floor as per

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registered will dated 25.07.2012 executed by his father Vasdev Saraf and also for permanent injunction, without impleading all the legal heirs of deceased Vasdev Saraf as he tried to locate the addresses of all the legal heirs but could not succeed to locate the same. Accordingly, it is prayed that the applicant/plaintiff be allowed to proceed with the present case without impleading all the legal heirs of deceased Vasdev Saraf.

3. Reply to the application has been filed by the respondent/defendant taking preliminary objections that application is not legally maintainable and applicant/plaintiff has filed the present application just to delay the proceedings of the case. On merits, it is stated that applicant/plaintiff has intentionally not impleaded the legal heirs of deceased Vasudev Saraf and denying all other averments, prayer for dismissal of the application has been made.

4. I have heard Sh.S.K.Dhawan Advocate, counsel for the applicant/plaintiff as well as Sh.Amit Monga Advocate, counsel for respondent/defendant and have perused the case file carefully and thoroughly with their able assistance.

5. Perusal of the file reveals that plaintiff has filed the present suit seeking declaration that he is owner in possession of first floor forming part of the suit property on the basis of a registered will dated

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25.07.2012, allegedly executed by Vasdev Saraf, who was owner of the suit property. As per the plaint, the plaintiff and defendant are sons of deceased Vasdev Saraf who died on 15.12.2016 and he executed a registered will dated 25.07.2012 in favour of the plaintiff qua first floor and in favour of the defendant qua ground floor and second floor of the suit property, however, defendant is now refuting the claim of the plaintiff. As such, the plaintiff has filed the present suit.

6. The present application has been filed by the applicant/plaintiff for permitting him to proceed with the present suit without impleading legal heirs of deceased Vasdev Saraf with the averments that the applicant/plaintiff tried his best to locate their addresses but could not succeed. As such, the application in hand be allowed. Although, the respondent/defendant has objected to maintainability of the present application and has prayed for dismissal of the application but during the course of arguments, learned counsel for the respondent/defendant suffered a statement that he has no objection if the application under Section 151 CPC is allowed. However, in my opinion, despite the statement of no objection suffered by the counsel for the respondent/defendant, it is a settled law that in order to decide the claim on the basis of a Will, impleading of all the legal heirs of the

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deceased/executant is necessary and all the legal heirs are the necessary parties as in their absence the claim cannot be adjudicated upon. The effect of non-joinder of necessary parties has been clearly reiterated by the Hon'ble Supreme Court of India in case titled "**Moresnar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D), 2022 LiveLaw (SC) 802**, wherein, it was observed that *a suit is liable to be dismissed if "necessary party" is not impleaded*. It was further observed that *twin test has to be satisfied for being a necessary party (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) that no effective decree can be passed in the absence of such a party*.

7. In view of the above observations, in my view, all the legal heirs of deceased Vasdev Saraf are necessary parties to the present suit and since non-joinder of necessary party is fatal to the suit of the applicant/plaintiff, as such, no permission can be granted to the applicant/plaintiff to proceed with the present suit in their absence. As such, application in hand stands dismissed and disposed off accordingly.

Announced in open Court.

Dated: 02.07.2024

Barinder Pal Kaur
Stenographer Gr.II

**(Supreet Kaur), PCS,
Addl.Civil Judge (Senior Division),
Amritsar. UID No.: PB00370**

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Present: Sh.S.K.Dhawan Advocate, counsel for plaintiff.
Sh.Amit Monga Advocate, counsel for the defendant

Heard arguments on the application moved by the plaintiff under Section 151 CPC. Vide my separate order of even date, said application under Section 151 CPC has been dismissed, for the reasons mentioned therein.

Case stands adjourned to 09.08.2024 for supplying details of all the legal heirs of deceased Vasdev Saraf by the plaintiff.

Announced in open Court.

Dated: 02.07.2024

**(Supreet Kaur), PCS,
Addl.Civil Judge (Senior Division),
Amritsar. UID No.: PB00370**

Barinder Pal Kaur
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