

SURESH CHANDER VS PARKASH CHANDER etc.

Present: Sh. MUKHTIAR MOHAMMAD Advocate for the plaintiff.
Sh. Arjun Bahri Adv. counsel for defendants No.1, 2 and 4.
Name of defendant No.3 struck off vide order dated
06.07.2023.

1. Heard on application filed by defendants No.1 & 4 for production of documents. It is stated that the plaintiff while filing the present suit claiming that the property of deceased Late Sh.Narayan Dutt has already been mutated by Revenue Department in his name bearing No.3964 dated 02.03.2022, whereas, the applicant never appeared before the Revenue Authorities nor ever given any consent to the plaintiff for the alleged mutation qua the estate left behind by deceased Narayan Dutt as such document i.e. copy of mutation alongwith NOC related to the applicant is very much required. The plaintiff further claiming that he has obtained loan for the construction of house in question from PNB Housing Finance. The complete account statement related to the loan amount from the date of loan till today is also required to be produced by the plaintiff in original/certified copy duly certified by the bank. The plaintiff further alleged that construction was raised after obtaining loan, so sanctioned site plan from the concerned authority qua the permission to raise construction is also required to be proved. It is further stated that the plaintiff was having matrimonial dispute with his wife in the court at Faridabad and Delhi and thereafter the matter has been settled and copies of the petition, complaints and written reply alongwith the order are also required to be produced, as the same are relevant documents proving the fact that the plaintiff was residing in Delhi alongwith his family but the

plaintiff intentionally has not produced the same with malafide intention to harass the applicant and also to grab the property of applicants. It is stated the abovesaid documents in original are very much required to be produced and copies of the same are required to the applicants/defendants for filing of proper written statement. Lastly, prayer has been made to allow the application in hand.

2. Per contra, reply has been filed by the plaintiff taking the preliminary objections that the same is not maintainable. On merits, while denying the entire averments, a prayer has been made for dismissal of the application.

3. I have heard the learned counsel for both the parties and have through the case file carefully.

4. Vide the instant application, defendants No.1 & 4 have sought for any document pertaining to the consent given by the defendants for mutation qua the suit property. The defendants have also sought for complete account statement from the date of loan till date alongwith permission from the concerned authorities to raise construction. The defendants have also sought for complaints between the plaintiff and his wife before the courts at Faridabad and Delhi. It is pertinent to mention here that present suit has been filed by the plaintiff for partition to the extent of 1/5th share of the suit property and for recovery of the amount spent by the plaintiff on the purchase and construction of the house by obtaining the loan from the PNB Housing Finance Ltd., Rama Mandi, Jalandhar. It is further pertinent to mention here that the

documents sought by the plaintiff have not been placed on record by the plaintiff. Further, it is the considered opinion of this court that as per the case of the plaintiff, the original owner of the property was the father of the parties and after his death mutation No. 3964 dated 02.03.2022 has been sanctioned in the revenue record to the extent of 1/5th share of the plaintiff and defendants No.1 to 4. It is not the case of the plaintiff that mutation was sanctioned after obtaining the consent of the defendants. As such, the document pertaining to consent is not required to be produced at this stage.

5. It would not be out of place to mention that plaintiff has annexed his entire account statement, the copy of which was duly supplied to the defendants. As such the plea regarding the account statement also stands declined.

6. It is the case of the plaintiff that he had raised construction after obtaining loan. The defendants have sought for the sanctioned sit plan and payment made for raising the construction. Further, in the opinion of this court, in case, it is case of the defendants that the plaintiff did not have the required sanction or site plan to raise construction then it is for the defendants to plead the same. At this stage, in the opinion of this court, there is no requirement of production of said documents for the purpose of filing written statement, as has been claimed.

7. Further, in the opinion of this court there is absolutely no requirement to produce the documents pertaining to complaint/litigation between the plaintiff and his wife since neither the wife of the plaintiff is

co-sharer in the property nor there is any mention in the plaint regarding her role qua the suit property. As such, said plea also stands declined.

8. In view of the discussion above, in the opinion of this court the instant application is nothing but the abuse of process of law. The same is ordered to be dismissed.

9. Perusal of the file further reveals that the defendants in the present case had appeared on 06.07.2023 and since then they have failed to file the written statement. Rather, the present application was filed after the lapse of the mandatory period of 90 days i.e. on 13.10.2023. Thus no ground is made out to give further opportunity to file the written statement. However, in the interest of justice and keeping in view the rights of defendants, if any, one last opportunity is given to defendants No.1, 2 & 4 for filing written statement on 22.11.2023, failing which this court shall proceed to strike of the defence of the defendants.

Date of Order: 14-11-2023
Parminder Kaur

(Joshica Sood)
Civil Judge (Junior Division)-8
UID NO . PB00530