

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA(OS) No. 65/2008**

RESERVED ON : September 22nd, 2008

% DATE OF DECISION: September 24th, 2008

S.S. Associates

..... Appellant.
Through: Mr. Ajeet Prasad Aggarwal,
Advocate.

Versus

Rajinder Kumar Lamba & Ors. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

J U D G M E N T

MANMOHAN, J:

1. The present appeal has been filed under Section 96 read with Order 41 Rule 1 of Code of Civil Procedure against the partial judgment and decree dated 30th July, 2008 passed by learned Single Judge in CS(OS) No. 2100/1996. By the virtue of the impugned order, learned Single Judge has passed a decree for specific performance of

the Agreement dated 27th September, 1995 against Shri Narinder Singh (Respondent No. 2 herein) to the extent of his 2/7th undivided share in the property bearing No. 72, Ring Road, Lajpat Nagar-III, New Delhi. However, learned Single Judge has neither granted relief of possession nor a declaration that the Agreement executed between the Appellant and Respondent Nos. 3 to 5 was illegal and void. On these aspects the learned Single Judge has observed that the case is required to be put to trial and needs to be adjudicated.

2. Learned Counsel for the Appellant has contended that in the suit filed by the Plaintiff – Respondent No. 1 there was a misjoinder of parties as the original Plaintiff – Respondent No. 1 had no privity of contract with the Appellant. It was further submitted that the Plaintiff – Respondent No. 1 had no locus to impugn the Agreement to Sell executed between the Appellant and Respondent Nos. 3 to 5 – who happen to be 5/7th owner of the suit property. He further pointed out that a suit for partition was already pending between the erstwhile owners of the suit property. Learned Counsel for Appellant also sought to rely upon a judgment of the Apex Court in ***A. Abdul Rashid Khan & Ors. Vs. P.A.K.A. Shahul Hamid & Ors. reported in (2000) 10 SCC 636*** wherein it was held that the relief of partition cannot be granted in a suit for specific performance. Consequently the Appellant contended that the suit filed by the Plaintiff – Respondent No. 1 was not maintainable.

3. However, in response to our queries, learned Counsel for Appellant fairly stated that the Appellant had nothing to do with the Agreement to Sell executed between the Respondent No. 2 and Plaintiff – Respondent No. 1.

4. We are of the view that learned Single Judge has neither dealt with nor decided any of the issues canvassed by the Appellant before us. We are also of the opinion that the impugned order in no way prejudices the rights of the Appellant. Consequently, we dispose of the present appeal by observing that all arguments, contentions and submissions are open to the Appellant (including the submissions raised before us) and the same shall be dealt with by the learned Single Judge in accordance with law at an appropriate stage.

MANMOHAN, J

MUKUL MUDGAL, J

September 24th, 2008
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