

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ EFA (OS) No. 9/2009

% Date of decision : 18.03.2009

DR. HARISH UPPAL APPELLANT
Through : Appellant in person.

- V E R S U S -

MR. J.N. UPPAL & ORS. RESPONDENTS
Through : Nemo.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

- | | | |
|----|--|----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (ORAL)

CM No. 3732/2009

Allowed subject to all just exceptions.

+ EFA (OS) No. 9/2009

1. The cause title of the case in the file as well as in the cause list is incorrectly shown and should be corrected as per the memo of parties. It should read as '*Dr. Harish Uppal v. Mr. J.N. Uppal & Others*'.

2. The present appeal has been filed by the appellant in person against the Order dated 22.01.2009 passed by learned Single Judge in EA Nos. 494-495/2008 in Ex. P. No. 102/2002 whereby the learned Single Judge directed that public auction must take place in respect of the two properties forming subject matter of dispute, i.e., (i) 20, Todal Mal Road, New Delhi – 110 001; and (ii) 9A/50, WEA, Karol Bagh, New Delhi – 110 005.
3. It is pertinent to notice at the very outset that a similar appeal against the same impugned order had been filed by one of the parties, namely, Ms. Indira Uppal, which was registered as EFA (OS) No. 6/2009. The said appeal came up before us on 02.03.2009 and was dismissed in the following terms :-

“The dispute in the present matter is between the brothers and sisters over inherited estate which has been going on for 20 years. The second round of litigation began when the execution proceedings were taken out. The objections to the execution proceedings were dismissed on 02.05.2008 and it was directed that, at the first instance, the prospect of *inter se* bidding should be explored. The lack of harmony between the parties is to such an extent that even this proposal of *inter se* bidding did not work out even though valuation was got done through the valuer in respect of the two properties which are subject matter of dispute i.e. 20, Todal Mal Road, New Delhi – 110 0001 and 9A/50, WEA, Karol Bagh, New Delhi – 110 005.

The appellant, one of the sisters, is aggrieved by the impugned order dated 22.01.2009 passed by the learned Single Judge on the Original Side directing that public auction must take place in respect of both the properties.

It was the plea of the appellant before the learned Single Judge, which is also the plea urged before us,

that the appellant is desirous of opting to purchase the full Karol Bagh property at the valuation done by the valuer. Unfortunately, the respondent nos.1 to 3 are aggrieved by the valuation as according to them it is on the lower side. There is differential in the value of the properties and what the appellant desires is that her share of 20 per cent in the Todar Mal Road property should be adjusted against the amount payable to the other co-sharers in the Karol Bagh property and this property i.e. the Karol Bagh property be transferred to her.

The dispute is not only in respect of the valuation of the properties but the claim by the appellant as the same claim is also made by respondent no.2 herein as he also wants to buy the Karol Bagh property.

It is in view of the aforesaid position that the learned Single Judge found that the principle of owelty would not assist in the present case as the said principle requires that a preference to be given to the person already living in the property and the respondent no.2 has also been living in the same property. Thus, both the appellant and respondent no.2 claim preferential rights on the principle of owelty.

The consequence of the aforesaid is that there was no option for the learned Single Judge but to put the properties to auction.

The matter is fixed on 30.03.2009 for fixing the mode of auction and date of auction.

Needless to say that the minimum price for such auction would at least be equal to the valuation given by the valuer and the parties would be permitted to bid to the exclusion of their share in the relevant properties.

The appeal is accordingly dismissed with the aforesaid observations."

4. The appellant, who conceded that he was in Court when the aforesaid Order was passed, submits that there are other aspects, which he would like to urge, which may persuade us to not only issue notice in this appeal, but also

to even recall the aforesaid Order. We, thus, proceeded to hear the appellant.

5. The first submission of the appellant is that in terms of Section 2 of the Partition Act, 1893 (hereinafter referred to as, 'the said Act'), the occasion for putting the property to sale would arise only when a division of the property cannot reasonably or conveniently be made. The provision reads as under :-

“2. Power to court to order sale instead of division in partition suits. — Whenever in any suit for partition in which, if institution prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason or the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

The appellant submits that between the five moiety holders, reasonable division is possible.

6. We find the aforesaid plea unsustainable. The occasion for sale arose only when no feasible division was possible. We again cannot lose sight of the fact that the matter has dragged on for 20 years and the parties must get the benefit of enjoyment of their respective shares.
7. The second plea of the appellant is that in terms of sub-section (2) of Section 3 of the said Act, if two or more

shareholders severally apply for leave to buy as provided in sub-section (1) of Section 3 of the said Act, the sale of the share or shares should be only by *inter se* bidding between those two parties and not by a public auction.

8. The appellant referred to the judgment of the Supreme Court in R. Ramamurthi Aiyar (dead) by L.R.s v. Raja V. Rajeswararao, AIR 1973 SC 643 to support both the pleas in respect of Section 2 and Section 3 of the said Act. On perusal of the judgment, we find that insofar as the plea of Section 2 of the said Act is concerned, the Supreme Court only clarifies that all that is required to be decided is that the division cannot reasonably or conveniently be made and that is apparent from the impugned order. The ambit of Section 3 of the said Act has been explained that as soon as a shareholder applies for leave to buy at a valuation the share of a party asking for sale under Section 3 of the said Act, he obtains an advantage and that court is bound thereafter to order valuation and after getting the same done to offer to sell the same to such shareholder at the valuation so made. We fail to appreciate how this judgment would come to the assistance of the appellant where there are disputes about valuation and competing interests even for sale of the same property. The object of the impugned order is to obtain the best possible price by putting the properties to public auction.

9. The appellant also referred to the judgment of learned Single Judge of this Court Hari Dev Shourie v. Madan Mohan Shourie & Ors., AIR 1980 Delhi 59 where it was held that the party seeking sale of its share and the court directing sale by public auction, the application for purchase of the property by the co-sharer is not maintainable as the time for making such application is when the court is requested to direct the sale of the property. Once again, this judgment is of little help to the appellant. In fact, it was put to the appellant that the appellant or any other co-sharer could always participate in the auction to the exclusion of his / her share in the said property for which we are inclined to grant relief. We find no merit in the appeal.

10. Dismissed.

CM No. 3731/2009

Dismissed.

SANJAY KISHAN KAUL, J.

March 18, 2009
madan

SUDERSHAN KUMAR MISRA, J.