

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 22/2009 & CM Nos.1946-47/2009**

Date of decision : September 3, 2009

DR. AJAY KR. SINHA Appellant
Through : Mr. B.M.D. Agrawal, Adv.

Versus

V.P. CHOPRA & ANR. Respondents
Through : Nemo.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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

ARUNA SURESH, J. (Oral)

1. Smt. Durga Devi was the owner of property No.E-155, Greater Kailash, New Delhi. She died living behind a Will. On her death, the said property devolved upon her three sons, Sh. Braham Prakash

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Chopra, Sh. Ved Prakash Chopra and Sh. Prem Prakash Chopra to the exclusion of her daughter. Ground floor fell to the share of Sh. Braham Prakash Chopra, the first floor to Sh. Ved Prakash Chopra and Barsati to the share of her third son Sh. Prem Prakash Chopra.

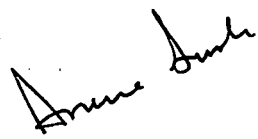
2. Sh. Braham Prakash Chopra sold his share in the ground floor to the appellant. Sh. Ved Prakash Chopra filed a suit No.128/2004 on 7.5.2004 seeking partition and possession of 1/3rd share of the roof of the second floor of the said house with passage to the third floor from the second floor. The said suit was dismissed by the trial court, vide judgment and decree dated 12.2.2008 with the observations that Braham Prakash Chopra was not made a party to the suit who also had 1/3rd share in the terrace over the second floor. Appeal against the said order was dismissed, vide impugned order dated 23.10.2008.
3. This appeal has been filed by the purchaser of the ground floor of the property which had fallen to the share of Braham Prakash Chopra and he (the

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appellant) was arrayed as defendant No.3 in the suit. He has assailed the judgment and decree of the appellate court on the grounds that after the purchase of the share of Braham Prakash Chopra he is legally entitled to 1/3rd share of the roof rights of the said property and therefore, the trial court as well as the first appellate court did not appreciate the law and facts of the case in the right perspective and judgment is illegal and unforceable in law.

4. Admittedly, Braham Prakash Chopra had only sold the ground floor of the house being his 1/3rd share in favour of the appellant. Since the Will was silent in respect of the terrace over the second floor, the appellate court rightly affirmed the judgment of the trial court observing that all the three sons of the deceased had equal share in the said terrace. Since Braham Prakash Chopra did not sell his 1/3rd right in the terrace, he was a necessary and proper party to the suit and therefore, non-impleadment of Braham Prakash Chopra was fatal to the maintainability of the suit.

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5. It is not in dispute that Braham Prakash Chopra did not sell his 1/3rd undivided share on the terrace above the second floor with a right of passage for going to said terrace. Thus, Braham Prakash Chopra kept his share on the terrace with himself only and he never transferred his ownership rights in the undivided 1/3rd share on the terrace in favour of the appellant.
 6. Under these circumstances, appellant has no locus standi even to file this appeal as he as a matter of right cannot claim partition of the terrace i.e. the subject matter of the suit for partition.
 7. There are no substantial questions of law raised in this appeal and I also do not find any question of law which needs formulation to decide the claim of the appellant.
 8. Hence, I find no merits in the appeal. The same is accordingly dismissed.


(ARUNA SURESH)
JUDGE

September 3, 2009
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