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

DECIDED ON: 08.12.2010

+ CS (OS) 981/2010
I.A. Nos.6623 & 15423/2010

SHAKEEL AHMAD Plaintiff
Through: Mr. Sumit Kumar Khatri, Advocate.

versus

FAIZ AHMAD & ANR Defendants
Through: Mr. W.A. Khan, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The plaintiff urges that in view of the admissions made by the defendants, a decree can be drawn in terms of Order-XII, R-6, CPC. The plaintiff is an undivided owner, and occupant of a portion of the suit property - D-619, 2nd floor, Saeedia Masjid, Chauhan Bangar, Shahdara.

2. It is stated that the first and second defendants are in occupation of the first floor and open roof and store, on the second floor. The plaintiff has produced a plan of the property in support of the suit. It is stated that the suit property was originally purchased by the plaintiff's father and the defendants (i.e. Late Shri Mahmood Ali) who died on 20.05.2009. It is further

submitted that apart from the present three parties, one Shri Khalil Ahmad (who has been described in paragraph-3 (c) of the suit) is also another brother entitled to the share in the property. The plaintiff apprehends that the defendants would dispose of the entire property and, therefore, seeks injunctive reliefs.

3. The defendants in the written statement firstly state that one of the necessary parties i.e. Khalil Ahmad has not been impleaded. It is also submitted that the defendants are residing in a portion of the property i.e. the first floor and are in occupation of the part of the second floor and that they have no intention at present to dispose of the property or create any third party rights. They also argue that a common portion of the ground floor is in their possession. It is submitted that the defendants never intended to sell or create any third party interest in the property. The relevant admission in the written statement is as follows: -

“5. That the defendants never threat or tried to sell or create any third party interest or dispossess the plaintiff from the suit premises where he is residing i.e. on the second floor and shown by alphabet as ABCD on the second floor in the attached copy of site plan and the plaintiff has not claimed any relief for permanent injunction against the defendants to restrain them from dispossessing the plaintiff from his said premises and the present suit is filed without any cause of action against the defendants.”

4. Apart from the above, the defendants' written statement also contends that the plaintiff ought to have sought for a decree of partition and not having done so and also not having impleaded one of the necessary party, the suit has to fail.

5. The Court has heard the counsel for the parties. The defendants do not deny that they are in possession of a substantial portion of the suit property; they also do not deny the plaintiff's undivided interest or share in the property - which works out to one - fourth. This Court is of the opinion that a joint owner of undivided share in the property (which is a family property) need not seek the relief of partition unless and until the cause of action for that arises or he wishes to

claim it. However, he can always maintain a suit for injunction, if he apprehends that the disposal of the shares of other co-owners is likely to prejudice him. In this case, the plaintiff is in admitted possession of a portion of the second floor; the rest of the property is in the possession of the defendants and the other co-owner. In these circumstances, the plaintiff's apprehensions are perhaps well founded. In any event, having regard to the admission by the defendants that they would not alienate or create any third party rights in respect of the suit property, this Court is of the opinion that a decree sought in the case can be conveniently granted without a trial.

6. In view of the above discussion, the suit has to succeed; it is decreed in terms of relief clause (a). The defendants are present in Court along with the counsel. They contend that they are not in a possession of the documents sought for and that the same are in the possession of the plaintiff. In these circumstances, the plaintiff cannot seek the relief claimed in paragraph (b) of the relief clause. Let a decree in terms of relief clause (a) be drawn. In the circumstances, there shall be no order as to costs. All the pending applications are also disposed of.

**S. RAVINDRA BHAT
(JUDGE)**

DECEMBER 08, 2010
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