

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

+ **RFA 140/2007**

VED PRAKASH & ORS. Appellants
Through: Mr. Sukhbir Singh, Advocate

versus

BRAHAM PRAKASH & ANR. Respondents
Through: Dr. Suman Chaudhary, Advocate
for the respondent No.1
Mr. S.K. Tyagi, Advocate for the
applicant Smt. Archana Devi in
CM No.3367/2008

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

ORDER

% **08.01.2010**

: **REVA KHETRAPAL, J. (Oral)**

CM No.3367/2008 in RFA 140/2007

1. This is an application filed on behalf of Smt. Archana Devi, wife of Shri Ashok Kumar (the respondent No.2 herein) under Order I Rule 10 CPC seeking impleadment as a necessary party and for setting aside of the judgment and decree dated 02.02.2007.
2. The brief facts leading to the filing of the present appeal are as

follows.

3. The appellants and the respondents, being the real brothers, were the legal heirs of late Shri Ram Kishan. The late father of the parties had three other brothers, namely, Shri Rishal Singh, Shri Amar Singh and Shri Manohar Singh. Late Shri Ram Kishan, Shri Rishal Singh, Shri Amar Singh and Shri Manohar Singh were the co-owners of property/residential plot comprised in Khasra No.3/38 (0-12), 3/39 (0-5), 59 (0-10) and 60 (1-0) situated in Village Baghroula. It is stated that no partition had been effected between late Shri Ram Kishan and his brothers and all the co-owners were residing in the property by way of a family settlement. During the lifetime of late Shri Ram Kishan himself, there was a further family settlement in the year 1980 whereby a partition took place between the appellants and the respondents. Since then, the appellants and the respondents had been residing in their respective portions. As per the revenue records, the total land measuring 47 Biswas, i.e., 2350 sq. yards is under the joint possession of the appellants, the respondents and the LRs of Shri Rishal Singh, Shri Amar Singh and Shri Manohar Singh, though each of the appellants and the respondents had $1/20^{\text{th}}$ share out of the said land, which comes to 117.5 sq. yards each. It is further stated that the appellants No.1 and 2

out of their own resources had constructed the house/building at Khasra No.3/38 measuring 155 sq. yards, in on about the year 1979. However, as already stated, in 1980, a family settlement had been arrived at between the parties and accordingly partition had taken place. It was agreed between the appellants and the respondents that the respondent No.1 shall remain in the built up area situated at Khasra No.3/38 measuring 155 sq. yards approximately. The appellants were moved out of the said built up property to their respective shares. As mutually agreed, the appellants were given their respective shares at Khasra No.59, but the same was in the form of cultivated land and no construction was existing that time. It is stated that later on the construction was raised by the appellants out of their own funds and the respondent No.2 was given his share at Khasra No.3/38, being the remaining area of Khasra No.3/38 measuring 145 sq. yards. It was also agreed that the respondent No.1 shall make a payment of Rs.15,000/- each to the appellants No.1 to 3 and Rs.25,000/- to the respondent No.2 in lieu of the built up property-cum-share retained by the respondent No.1, and in case of failure, the respondent No.1 shall hand over the peaceful and vacant possession of the built up property in his occupation to the appellants and the respondent No.2. The respondent No.1 neither

paid the said amount nor handed over the possession of the portion shown in red colour in the site plan. The respondent No.1 thereafter filed a suit for partition and permanent injunction.

4. A suit for partition having been filed, on the averments made in the plaint a preliminary decree for partition was passed by the learned trial court holding that suit property is liable to be partitioned. The respondents (the defendants therein) were also restrained from constructing any building upon the suit property or parting with the suit property to any other person.

5. The present appeal has been filed against the aforesaid preliminary decree of partition passed by the learned trial court, dated 2nd February, 2007. In the application under Order I Rule 10 CPC filed by the applicant Smt. Archana Devi, however, it is claimed that the property bearing Khasra No.27, which was the subject matter of the suit, is in the possession and ownership of the applicant and it is, therefore, necessary that the applicant, who was not impleaded as a party in the suit, be also impleaded as a necessary party for the adjudication of the suit in which partition of the aforesaid property is claimed in the absence of the applicant.

6. It is averred in the application that on 10th July, 2007 when the

applicant was at her residence, summons issued by this Court against the applicant's husband, Shri Ashok Kumar (the respondent No.2 herein) were received by her and on receipt of the said summons, the applicant came to know that the present appeal was pending and was fixed for 17.07.2007. The applicant claims that she tried to know about the said appeal from her husband, who refused to impart any information to her in this regard. The applicant also tried to know from her other brothers-in-law about the matter and eventually discovered that a suit for partition was pending in the Court of the learned Additional District Judge and that the subject matter of the said suit included property belonging to the applicant and purchased by the applicant by way of registered Sale Deed dated 29.07.2005 vide registration No.10062 in Book No.I, Vol. No.2177, pages 92 to 101 in the office of the Sub-Registrar-IX, New Delhi.

7. The applicant thereupon, in order to protect her interest, moved the present application for getting herself impleaded in the present appeal. Notice of the application was issued to the parties. The learned counsel for the appellants on receipt of the notice states that he has no objection to the impleadment of the applicant. The learned counsel for the respondent No.1, however, contends that the applicant has no right

to be impleaded as a party in view of the fact that she being the wife of the defendant No.4 in the suit (the respondent No.2 herein) was all along aware of the pendency of the suit for partition. This is strongly refuted by the learned counsel for the applicant who submits that the applicant was kept in the dark throughout, and that though the applicant is the absolute owner of property bearing Khasra No.27 measuring 125 sq. yards, the husband of the applicant instead of protecting her interest is, in connivance with his brothers, seeking to oust her from her property. It is also submitted that the suit property was purchased by the applicant from her mother-in-law Smt. Mewa Devi for a consideration of Rs.62,500/- and Smt. Mewa Devi had executed a registered Sale Deed in favour of the applicant in respect of the aforesaid property.

8. A perusal of the judgment of the learned trial court shows that in paragraph 25 of the aforesaid judgment the trial court had observed that the defendants had not placed any document on record to show that Khasra No.27, measuring 125 sq. yards had been purchased by the defendant No.4, Shri Ashok Kumar and for this reason the trial court had proceeded to opine that the said property along with the other suit property was liable to be partitioned in equal shares between the parties.

The applicant herein claims to be the absolute owner of the property by virtue of a registered Sale Deed which has been filed by her along with her application. In this view of the matter, her impleadment in the suit for partition must be allowed and is accordingly allowed.

9. The application stands disposed of with the direction to the plaintiff to file an amended memo of parties before the learned trial court. The matter is remanded to the learned trial court to be considered in the light of the averments made by Smt. Archana Devi and the sale deed placed on record by her. Smt. Archana Devi shall file her written statement on or before the next date of hearing.

10. List before the learned trial court on 15th March, 2010 for consideration.

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In view of the application under Order I Rule 10 CPC having been allowed, the appeal as also CM Nos..3590/2007 and 3591/2007 stand disposed of.

REVA KHETRAPAL,J

**January 8, 2010
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