

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

% *Order delivered on: August 02, 2013*

+ **CM(M) No.756/2013 & CM No.11611/2013**

P.K. BHARTI Petitioner
Through Mr.B.U. Barqi, Adv. with
Mr.K.N. Mishra, Adv.

versus

AMAR SINGH Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The abovementioned petition has been filed by the petitioner against the impugned order dated 8th March, 2013 passed by Civil Judge-02 (South) Saket Courts, New Delhi in Civil Suit No.548/2011.

2. Brief facts as culled out from the petition are that the plaintiff and the defendant are real brothers. The father of the parties to the suit namely Late Sh. Gainda Ram S/o Late Sh. Ramji Lal, R/o 33, Bhim Gali, Bhagwan Nagar, New Delhi-1100 14 was the owner of the property bearing No.33 measuring 90 sq. yards falls in Khasra No.255, Mauja Kilokri, situated at Bhim Gali in the colony known as Bhagwan Nagar, New Delhi-1100 14 by virtue of registered Will as document No.3788, in Addl. Book No.III, Volume No.461, on page 15 on 5th August, 1988, in the office of Sub-Registrar-III, Asaf Ali Road, New Delhi duly executed by its erstwhile owner Sh. Mool Chand S/o Sh. Kalka Das, R/o D-27, Ranjit Nagar, New

Delhi. The father of the parties was expired on 11th December, 1994, leaving behind the parties to the suit including the mother of the parties to the suit namely Smt. Durgi. All his legal heirs inherited the 1/3rd undivided share in the aforesaid property each. Smt. Durgi widow of Late Sh. Gainsa Ram (mother of the parties to the suit) released, relinquished, surrendered, disclaimed, given up all her right, title, claim, share or interest of any nature in the said property in favour of the parties to the suit, in blood relation with natural love and affection and in respect thereto she executed a Relinquishment Deed dated 18th December, 2000 which was got registered on 2nd January, 2001. By virtue of the said Relinquishment Deed both parties to the suit become the owner 50%-50% share each in the property. Unfortunately, on 9th May, 2007 the mother of the parties to the suit namely Smt. Durgi was expired.

3. The case of the petitioner is that thereafter on 26th March, 2002 a Memorandum of Oral Partition executed between the parties to the suit and equally got shared/partitioned of the abovesaid property between them. The suit property fell into the share of the plaintiff by virtue of the said Memorandum of Oral Partition vide dated 26th March, 2002.

4. The petitioner further submitted that on 17th November, 2011 the defendant in order to grab the suit property put a new lock to the shutter of the shop i.e. the suit property of the plaintiff after breaking the old lock of the plaintiff. The petitioner reported the said incident to the police who asked both the parties to come to the police station with their respective documents regarding ownership of the suit property. Both the parties to the suit submitted their respective documents regarding the suit property to the concerned police station. The police has refused to take any legal action

against the defendant cited reasons that the dispute relates to the property between the parties to the suit and it was a civil nature case and advised the plaintiff to approach before the Civil Court for appropriate remedy against the defendant.

5. The petitioner submits that both parties put their locks to the shutter of the shop as the respondent refused to give the peaceful possession of the suit property, therefore, the suit has been filed.

6. Learned counsel appearing on behalf of petitioner has admitted that nowhere in the plaint, it was mentioned that the original Memorandum of Oral Partition was lying with respondent. Even photocopy of the same was admittedly filed by the petitioner after filing of the written statement by the respondent, though the alleged photocopy, which was filed subsequently, was in his possession when the suit was filed.

7. After hearing the counsel and having gone through the material on record, I agree with the reasons given by the learned court below that signatures on the Memorandum of Oral Partition are blurred and signatures appearing may not be able to be identified correctly by the hand-writing expert. Thus, the petitioner if wants to prove the said document, there are more ways to prove the same in evidence.

8. Therefore, in view of above said reasons, the prayer of the petitioner cannot be accepted.

9. The petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

AUGUST 02, 2013