

\$~7

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

+ RFA 694/2014

RAJ ROOP (SINCE DECEASED THR HIS
LEGAL HEIRS) & ORS

..... Appellants

Through: Mr. S.K. Bhadhuri and Ms. Kirti
Parmar, Advocates

versus

JITENDER SINGH & ORS

..... Respondents

Through: Ms. Smita Maan and Mr. Vishal Maan,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **16.09.2015**

RFA 694/2014 and CM No.21335/2014 (stay)

1. This is an appeal preferred against the judgment and decree dated 14.10.2014, passed by the trial court. By the impugned judgment and decree, the appellants' suit for partition, permanent and mandatory injunction was dismissed.

1.1 The principal ground on which the suit was dismissed, was that, the appellants had not sought partition of all properties, which fell in the common pool. The trial court has noted in the impugned judgment that this fact has been accepted by the appellants in the replication.

1.2 I may also note that the respondents / defendants had raised this objection in their written statement, and thereupon, given description of the 8 properties (which included the 3 properties of which partition was

sought) in paragraph 8 of the written statement.

2. Having regard to the aforesaid position, Mr. Bhaduri, who appears on behalf of the appellants/ plaintiffs concedes that there is a defect in the suit.

2.1 The learned counsel for the respondents/defendants, on the other hand, says that she would have no difficulty if the appeal is allowed and the impugned judgment and decree is set aside and liberty is given to the appellants to amend the plaint to bring within its fold all eight (8) properties, which are referred to in paragraph 8(i) of their written statement.

2.2 Mr. Bhaduri says that he will amend the plaint and bring within its ambit all 8 properties.

2.2 To be noted, the property described in paragraph 8(i)(h) of the written statement has incorrectly been described as 473/3 Min (0-02) whereas it should be, according to the counsel for the parties, described as 474/3 Min (0-02).

2.3 I may only record that Mr. Bhaduri says that properties described in paragraph 8(i)(a), 8(1)(b), 8(i)(c) and 8(i)(d) have already been partitioned. These properties are described as : plot comprised in Khasra no.457 (0-18), plot comprised in Khasra no.458 (0-12), plot comprised in Khasra no.459 (0-17) and plot comprised in Khasra no.460 (0-16).

2.4 In so far as property described in paragraph 8(i)(h) of the written statement is concerned, which ought to have been described as : 474/3 Min (0-02), Mr. Bhaduri says that the possession of the same is with the Government.

2.5 The counsel for the respondents / defendants, however, contests this position.

3. Accordingly, the petition is disposed of, with the following directions :-

- (i). The impugned judgment and decree is set aside.
- (ii). The appellants / plaintiffs will file an amended plaint within four weeks from today.
- (iii). Upon a copy of the amended plaint being served, the respondents / defendants will file their amended written statement.
- (iv). The trial court will thereafter adjudicate as to whether or not a decree for partition ought to be passed qua all eight (8) properties, referred to hereinabove.
- (v). The trial court will endeavour to conclude the suit proceedings within nine (9) months from today.
- (vi). The counsel and the parties will appear before the trial court for issuance of appropriate directions in this behalf on 05.10.2015.
- (vii). The interim order issued by this court will continue to operate till the next date of hearing when the trial court will hear arguments as to whether or not in the given circumstances, the order ought to continue to operate. The trial court after hearing the parties will have liberty to modify, vary or even vacate the order.

4. With the aforesaid directions in place, the captioned appeal is disposed of.

5. The captioned application, being: CM No.21335/2014 has been rendered infructuous. The same is accordingly, disposed of.

CM No.8115/2015 (u/O. 39 R. 1 & 2 CPC)

6. The learned counsel for the respondents /defendants submits that she does not wish to press the captioned application.
7. The captioned application is accordingly, disposed of.

RAJIV SHAKDHER, J

SEPTEMBER 16, 2015

yg