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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 15.02.2016

Judgment delivered on : 18.02.2016

+ CM(M) 988/2012 & C.M. No.15331/2012

PREM DASS AND ORS

..... Petitioners

Through Mr.Om Prakash and Mr.
Shwetank Vedi, Advocates.

versus

SUJATA

..... Respondent

Through Mr.C.S.Prasher and Mr.
S.K.Badal, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Orders impugned before this Court are the orders dated 02.6.2011, 08.8.2011, 06.02.2012 and 11.6.2012. This petition arises out of a suit filed by the plaintiff-sister against her other siblings seeking a partition of the suit properties.

2 Record discloses that Ram Swaroop was the owner of two properties –(i) property bearing no.1915/43, Naiwala Karol Bagh, New Delhi, (ii) property bearing no.8264, Multani Building, Roshanara Road,

Subzi Mandi, Delhi. Ram Swaroop expired on 20.7.2004. He died intestate. His daughter Sujata has filed the present suit against her siblings. This was qua aforementioned properties. Submission being that she is entitled to a partition of the suit properties as their father had died intestate.

3 In the course of the proceedings, on 14.9.2009, a preliminary decree was passed by the Trial Court. It was noted that there are five siblings all of whom are entitled to an equal share in the suit properties i.e. $\frac{1}{5}^{\text{th}}$ share. This is an admitted position even on date.

4 On 07.4.2010 a local commissioner was appointed. He had filed his report stating that the properties cannot be divided by metes and bounds.

5 The plaintiff on 13.6.2010 filed a valuation report qua the two properties. The property at 1915/43, Naiwala Karol Bagh, New Delhi has a market value of Rs.19 lacs; the property at 8264, Multani Building, Roshanara Road, Subzi Mandi, Delhi has a market value of Rs.9 lacs.

6 There is no order dated 02.6.2011 on the court record. Order dated 08.8.2011 was an order vide which the Court had noted that the

two properties (afore-detailed) have a market value of Rs.30 lacs cumulatively. It had been noted that each party has a 1/6th share. This was later on modified on an application filed before the Court and the modified order (dated 06.02.2012) read as 1/5th share of each party. There is no quarrel on this 1/5th share. Vide the order dated 08.8.2011 the Court had further held that since the share of the four defendants in the property at Roshanara Road, Subzi Mandi amounts to Rs.4 lacs and on the plaintiff paying a sum of Rs.4 lacs to all the four defendants, the plaintiff will have exclusive possession of the property at 8264, Multani Building, Roshanara Road, Subzi Mandi, Delhi where the plaintiff is already staying. This order was passed in the presence of the plaintiff and the counsel for the defendants. Payment of this amount of Rs.4 lacs was to be paid by the plaintiff within a period of two months to the defendants.

7 This order dated 08.8.2011 was challenged by an application dated 13.10.2011 which was filed within two months of passing of this order. In this application (under Sections 151 and 152 C.P.C.) the contention of the defendants was that a fresh order of payment should be given keeping in view the valuation report filed by the defendants as

the valuation report filed by the plaintiff dated 13.6.2010 is incorrect; payment of Rs.4 lacs to be paid by the plaintiff in favour of all the defendants pursuant to which the plaintiff would be entitled to all rights in the property at 8264, Multani Building, Roshanara Road, Subzi Mandi, Delhi is required to be reconsidered.

8 On 06.02.2012 (second impugned order) vide which the correction from $1/6^{\text{th}}$ share to $1/5^{\text{th}}$ share qua each of the parties was made but the submission that the amount of Rs.4 lacs to be paid by the plaintiff to all the defendants requires a reconsideration was declined.

9 A subsequent application was thereafter filed on 11.6.2012 seeking a modification of the orders dated 08.8.2011 and 06.02.2012. The Court dismissed the application on the same day. It was noted that that there were five share holders in the two properties and the property at Roshanara Road was valued at Rs.9 lacs whereas the property at Naiwala Karol Bagh was valued at Rs.19 lacs; since each party had a $1/5^{\text{th}}$ share, keeping in view the valuation of the properties the order dated 08.8.2011 directing the plaintiff to pay a sum of Rs.4 lacs to all the defendants in lieu of the property at Roshanara Road suffers from no infirmity; the share of each party in the two properties being Rs.6 lacs

and on payment of Rs.4 lacs to the defendants she was entitled to retain this property at Roshanara Raod which was valued at Rs.9 lacs.

10 The foremost arguments urged before this Court is that the file has now been consigned to record room. During the course of trial at best it could be said that a preliminary decree had been passed but no final decree of partition has been passed. The order passed on 02.6.2012 reveals that on that date the file was consigned to the record room. Admittedly, perusal of this order shows that the file has been consigned to record and final decree has yet not yet been passed.

11 Queries and counter-queries have been put to the learned counsels. Admittedly, it was a preliminary decree of partition which has been passed in the pending proceedings. This was in this suit for partition. The report of the local commissioner filed before the Trial Court (dated 13.6.2010) had reported that the properties cannot be divided by metes and bounds.

12 It is a settled proposition of law that a preliminary decree only declares rights and interests of the parties. In certain cases a decree may be both preliminary and final. What is executable is, however, a final decree and not a preliminary decree unless and until the final decree is a

part of the preliminary decree. Admittedly, no final decree has been passed in this case.

13 In (2007) 2 SCC 355 Harsham Abbas Sayyad Vs. Usman Abbas Sayyad and Ors. the Apex Court while dealing with a similar factual matrix has noted what can be executed is a final decree and not a preliminary decree within the meaning of Section 2(2) of the CPC. The explanation under Section 2(2) presupposes that the decree is final when the adjudication completely disposes of the suit. Under Order XX Rule 18 of the CPC the Court may pass a preliminary decree and proceedings for a final decree may be initiated thereafter; there being no limitation for the initiation of the said proceedings. However, what can be executed is a final decree and not a preliminary decree.

14 In the instant case, admittedly, there is no final decree. Question of execution of a final decree thus does not arise. Record before this Court shows that the parties had agreed for adjudication of their rights and interests inter se only qua one property i.e. the property at Roshanara Road, Subzi Mandi. The status of the second property of Naiwala, Karol Bagh and the rights of the four defendants had not been adjudicated upon. As such even a preliminary decree was not passed as

the rights of the defendants yet remained to be answered. The order dated 02.6.2012 had thereafter consigned the file to the record room without passing a final decree.

15 This Court also notes the grievance of the four defendants (before this Court) that their valuation reports were not considered by the Trial Court and the valuation per se of the plaintiff had been noted while recording the order dated 08.8.2011. No doubt they were represented through their counsel but their counsel did not have instructions to make a submission on their behalf pursuant to which this order was passed directing the plaintiff to pay a sum of Rs.4 lacs and keep the entire property of Roshanara Road. Submission being that this order has been wholly prejudicial to the interest of the defendants and it was on 13.10.2011 itself i.e. within a span of two months that they had moved an appropriate application seeking correction in that order. A written complaint dated 08.12.2011 against their counsel Shri Madan Sagar was also made before the Bar Council of Delhi. The fate of that application has already been noted above; it was declined.

16 This Court is of the view that in its power of superintendence it would be just and equitable that all the parties should be given a fair

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hearing before the Trial Court who shall pass an order afresh on the inter se rights of the parties. A preliminary decree/final decree may be passed after objections and counter-objections made by all the five siblings (four defendants before this Court and one plaintiff) on the record which has already been placed before the Trial Court but which as per the contention of the defendants was not considered as their valuation reports qua the two properties was never assessed. Accordingly, impugned orders are accordingly set aside. The Trial Court shall after hearing the parties pass a preliminary decree and thereafter on the initiation of appropriate proceedings by the respective parties proceed to pass a final decree.

17 Petition disposed of in the above terms.

18 parties are directed to appear before Trial Court on 11.03.2016.

INDERMEET KAUR, J

FEBRUARY 18, 2016

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