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

+ RFA No.221/2016

OM PRAKASH

..... Appellant

Through: Mr. Vishwa Bhushan Arya, Adv.

versus

PARSANDI DEVI & ORS

..... Respondents

Through: Mr. Sanjay Goswami, Adv. for R-7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.04.2016

Caveat No.329/2016.

1. The counsel for the caveator has appeared.
2. The caveat stands discharged.

CM No.13699/2016 (for exemption) and CM No.13701/2016 (exemption from filing decree sheet).

3. Allowed, subject to just exceptions.
4. The applications stand disposed of.

RFA No.221/2016, CM No.13700/2016 (for condonation of 490 days delay in filing the appeal) & CM No.13698/2016 (for stay).

5. This first appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the orders dated 20th August, 2014, 20th August, 2015 and 12th January, 2016 of the Court of the Additional District Judge (ADJ)-02 (South-East), Saket Courts, Delhi in Civil Suit No.593/2012 filed by the respondents against the appellant for partition of House No.12/3, Pant Nagar, New Delhi and for permanent injunction restraining the appellant

from selling or transferring the possession of the property till the disposal of the suit.

6. Vide impugned order dated 20th August, 2014 the learned ADJ held the appellant and the respondents no.1 to 6 to be having 1/7th share each in the property and further held that considering that the property measures only 13.95 sq. mtrs. and there were 15 claimants (inclusive of the legal heirs of the deceased respondents no.1 to 6) thereto, the same was not capable of division by metes and bounds and gave an opportunity to the parties to devise the mode of partitioning the property.

7. It appears that by further orders the property was ordered to be auctioned and was so auctioned and the bid of the respondent no.7 Mr. S.K. Agrawal/Surender Aggarwal being the highest was accepted. Vide impugned order dated 20th August, 2015 the application of the appellant/defendant under Order 21 Rule 90 was dismissed and the sale of the property in favour of the respondent no.7 confirmed and Sale Certificate ordered to be issued.

8. The appellant/defendant thereafter applied for review of the order dated 20th August, 2015 and which application has been dismissed vide impugned order dated 12th January, 2016.

9. The counsel for the appellant/defendant does not dispute that the property aforesaid belonged to Shri Sumer Singh predecessor of the appellant and the respondents no.1 to 6 and that the appellant and the respondents no.1 to 6 have 1/7th share each therein. On enquiry he further states that though certain defences were taken in the written statement to the

suit and did not find favour with the learned ADJ but the appellant is now not pursuing the same or challenging the findings of the learned ADJ thereon. The only argument urged in this appeal is that the property no.12/3 Pant Nagar, New Delhi has a first floor also bearing no.12/4 and the lease of the land *ad measuring* 13.95 sq. mtrs. underneath the property was in the name of Shri Sumer Singh i.e. the predecessor of the appellant and the respondents no.1 to 6 and in the name of the allottee of the first floor bearing no.12/4; it is argued that in the auction held the leasehold rights in the entire land have been conveyed to the respondent no.7 when only the leasehold rights of the share of Shri Sumer Singh could have been conveyed and thus a fraud has been played upon the Court.

10. The counsel for the caveator/respondent no.7/auction purchaser states that the respondent no.7 auction purchaser has purchased the property with the knowledge of the said fact.

11. I am otherwise also of the view that there is no merit in the only plea which has been urged by the counsel for the appellant. Though he has also urged that no site plan was produced but once the ground floor and the upper floor bear separate municipal numbers and the decree was for partition of the ground floor only, the possibility of confusion or of fraud as is alleged does not exist.

12. No other ground has been urged.

13. Though this is a first appeal under Section 96 of the CPC, ordinarily required to be heard after calling for the Trial Court record and perusing the same, but in view of the limited challenge aforesaid made herein and further

considering warrants for possession of the property against the appellant and three other family members stated to be in possession of the property have already been issued for today, it is not deemed expedient to call for the Trial Court record or to summon the respondents no.1 to 6.

13. The appeal is dismissed.

14. The counsel for the appellant at this stage states that he withdraws the appeal and seeks three months time to vacate the portion of the property in his possession.

15. On enquiry, whether the portion in occupation of the appellant can be segregated from the remaining property, the counsel for the appellant has drawn attention to page 100A of the paper book and states that the said site plan is a part of the Trial Court record and has been proved and that the appellant is in possession of the rear portion of the property and has access from the rear service lane shown as *gali* and is demarcated from the remaining portion of the property by a wall at points A-B now put on the said site plan segregating the said portion from the remaining property.

16. The counsel for the appellant further states that he has instructions from the appellant to give an undertaking to this Court to hand over vacant peaceful physical possession of the portion demarcated as A,B,C&D in the site plan at page 100A of the paper book on or before 31st July, 2016 to the respondent no.7.

17. The appellant through Advocate has been made aware of the consequences of breach of undertaking given to the Court.

18. At this stage the counsel for the appellant states that he does not want to give undertaking on behalf of the appellant.

19. Without undertaking, time cannot be granted.

20. The appeal remains dismissed. I may however record that though I entertain doubt as to maintainability of this appeal as recorded in yesterday's order also but need to go into said aspect is not felt.

No costs.

RAJIV SAHAI ENDLAW, J

APRIL 19, 2016

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