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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 996/2015 & IA No.7504/2015 (u/O XXXIX R-1&2 CPC)**
CHANDER WATI Plaintiff
Through: Mr. Shiv Charan Garg & Mr. Imran
Khan, Advs.

versus

BABITA & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.07.2016**

1. The plaintiff has sued for a) declaration to the effect that the plaintiff is the exclusive owner of upper ground floor and first floor of property No.931-932, Punjabi Mohalla, Subzi Mandi, Delhi-110 007; b) permanent injunction restraining the defendant no.2 Smt. Madhu from creating any third party interest in undivided 25% share i.e. 1/4th undivided share of the entire property No.931-932, Punjabi Mohalla, Subzi Mandi, Delhi-110 007; and, c) mandatory injunction directing the Sub-Registrar, Kashmere Gate, Delhi-110 006 to modify the sale deed dated 29th August, 2014 registered as document No.7786, Book No.1, Vol. No.5459, on pages 95 to 106 on 29th August, 2014 in terms of the decree for declaration.
2. Summons of the suit and notice of the application for interim relief were issued to the three defendants.
3. Neither of the three defendants appeared despite service and were vide order dated 6th January, 2016 proceeded against *ex parte* and the plaintiff permitted to lead *ex parte* evidence.

4. The plaintiff in her *ex parte* evidence, besides her own affidavit by way of examination-in-chief has filed affidavits by way of examination-in-chief of three other witnesses and closed her evidence.
5. The counsel for the plaintiff has been heard.
6. It is *inter alia* the case of the plaintiff:
 - (i) that she along with the defendants no.1 and 3 viz. Smt. Babita and Smt. Premwati had purchased the subject property vide Sale Deed dated 25th July, 2011 registered as document No.6582, Book No.1, Vol. No.3938 on pages 1 to 6 on 27th July, 2011;
 - (ii) that as per the said sale deed, the share of the plaintiff in the property was 50% and the share of each of the defendant no.1 Smt. Babita and defendant no.3 Smt. Premwati was 25% and they had paid the purchase consideration accordingly;
 - (iii) that the plaintiff and the defendants no.1 and 3 re-developed the property and the property now comprises of a stilt floor, upper ground floor, first floor, second floor and third floor;
 - (iv) that as per mutual agreement of the parties, the plaintiff became the exclusive owner of upper ground floor and first floor and the defendants no.1 and 3 became the exclusive owner of third floor and second floor respectively with the terrace above the third floor and the stilt area to be shared as per their respective shares in the property and the staircase to be used in common;

- (v) that the plaintiff since then has been enjoying exclusive possession of her said portion of the property and similarly the defendants no.1 and 3 were enjoying exclusive possession and ownership of the portions which have fallen to their share;
- (vi) that though it was also agreed between the plaintiff and defendants no.1 and 3 that they would have the right of pre-emption against each other but the defendant no.1 has in violation thereof, vide sale deed of which rectification is sought, sold her portion i.e. third floor to the defendant no.2 Smt. Madhu;
- (vii) that the defendants no.1 and 2 in the sale deed so executed have described the defendant no.1 as having sold her 1/4th undivided share in the entire built up property to the defendant no.2.

7. The plaintiff in her *ex parte* evidence:

- (i) has proved the sale deed by which the plaintiff and the defendants no.1 and 3 had acquired the property as Ex.PW2/1 in which the share of the plaintiff and the defendants no.1 and 3 are described as 50%, 25% and 25% respectively;
- (ii) has proved the site plan Ex.PW2/3 of the re-developed property in which the plaintiff has shown her portion in red colour, the portion of the defendant no.1 in blue colour and the defendant no.3 in green colour and the common areas in yellow colour;

(iii) has proved the sale deed executed by the defendant no.1 in favour of the defendant no.2 as Ex.PW2/5 showing the property sold to be the 1/4th (25%) share of the defendant no.1 in the entire property;

(iv) has proved the electricity bills of the upper ground floor and first floor in the name of the plaintiff only as Ex.PW2/4;

8. The plaintiff has besides herself, examined her husband as well as two other witnesses in support of her case including as to such verbal settlement having been arrived at between the plaintiff and the defendants no.1 and 3 with respect to their share to the re-developed property.

9. The defendants having not contested the suit, the claim of the plaintiff which otherwise is found to be lawful, has to be believed. Law permits oral partition of the property and the plaintiff by her evidence and by the documents proved has established such partition of the property in the shares as claimed by the plaintiff.

10. Accordingly, the suit is decreed:

(a) for declaration, declaring the plaintiff to be the owner of upper ground floor and first floor as shown in red colour in Ex.PW2/3, the defendant no.1 and now the defendant no.2 to be the owner of third floor as shown in blue colour in Ex.PW2/3 and the defendant no.3 to be the owner of the second floor as shown in green colour in the site plan Ex.PW2/3, of the suit property No.931-932, Punjabi Mohalla, Subzi Mandi, Delhi-110 007; and,

- (b) for permanent injunction restraining the defendant no.2 from creating any third party interest in any other portion of the property save the portion of which she is the owner.

11. However the need to pass a decree for rectification of the sale deed Ex.PW2/5 executed by defendant no.1 in favour of defendant no.2 is not felt for the reason that it appears that since the sale deed (Ex.PW2/1) under which the plaintiff and defendants no.1 and 3 have acquired the property, they were the owners of undivided share in the property and there was no document partitioning the property, the Sub-Registrar would ordinarily not have registered the sale deed of exclusive portion of the property in favour of defendant no.2. The purpose of the plaintiff would be served by directing the Sub-Registrar, Kashmere Gate, Delhi to on the copy of the sale deed registered as document No.7786, Book No.1, Vol. No.5459, on pages 95 to 106 on 29th August, 2014, make an endorsement of the same being subject to the decree in this suit. A copy of this decree be forwarded to the Sub-Registrar Kashmere Gate, Delhi-110 006 for compliance.

13. The defendants having not contested the suit, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JULY 18, 2016

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