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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment dated 22nd September, 2016***

+ CS(OS) 2096/2013

BHAGWAN DAS KEWAL RAMANI Plaintiff

Through : Mr.Ajay Talesara, Mr. Ambar
Qamaruddin and Mr. Tejasvi Kumar,
Advocates

versus

ISHU RAMANI & ANR Defendants

Through : Mr.Sunil Goel, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The plaintiff has filed the present suit against the defendants for partition and permanent injunction.
2. The plaintiff seeks partition of property bearing no.3/30, West Patel Nagar, New Delhi measuring 200 sq. yds. This property stands in the name of Smt. Parpati Kewal Ramani, the mother of the plaintiff and mother-in-law of defendant no.1 and grand-mother of defendant no.2. As per the plaint, this property measuring 200 sq. yds was allotted to the mother of the plaintiff Smt. Parpati Kewal Ramani vide a registered Perpetual Lease Deed and Conveyance Deed dated 30.07.1966. As per the plaint, Smt. Parpati Kewal Ramani during her life time executed a registered Will dated 13.11.1969. Smt. Parpati Kewal Ramani expired on 24.07.1982. As per the Will, the property was to devolve in favour of her three sons:
 - (i) Sh. Gian Chand-ground floor;
 - (ii) Sh. Bhagwan Das-first floor; and

(iii) Sh. Dwarka Das-second floor (Barsati).

3. It is not in dispute that Sh. Dwarka Das relinquished his share in the second floor in favour of his younger brother Shri Bhagwan Das, the plaintiff herein vide registered Relinquishment Deed dated 21.02.1989. Thus, Sh. Bhagwan Das, plaintiff became $2/3^{\text{rd}}$ owner of the suit property.
4. It may also be noticed that on 01.09.1989 and 03.06.1991, Sh. Gian Chand and the plaintiff requested the Land & Development Officer, Nirman Bhawan for mutation of the suit property in accordance with the Will of the mother and on the basis of the Relinquishment Deed of the brother Sh. Dwarka Das in the respective shares, *i.e.*, $2/3^{\text{rd}}$ in the name of plaintiff and $1/3^{\text{rd}}$ in the name of Gian Chand. The necessary mutation was carried out. The respective parties claim that they are in actual physical possession of their respective shares, *i.e.*, the plaintiff is in actual physical possession of the first floor and the second floor of the suit property and legal heirs of Gian Chand(defendants no.1 and 2) are in actual physical possession of the ground floor of the suit property.
5. The plaintiff, Bhagwan Das has filed the present suit seeking a Decree of Partition of the suit property in terms of the Will of Smt. Parpati Kewal Ramani and Relinquishment Deed executed by Sh. Dwarka Das in favour of the plaintiff. Written statement was filed by defendants no.1 and 2. As per the written statement, the suit property already stood partitioned in terms of the Will and the Relinquishment Deed. Para 4 of the preliminary averments and para 18 of the written statement read as under:

“4. That the real objective of the plaintiff is to sell the suit property, which is also evidenced from prayer (c) in the suit. The property has been divided floor-wise between the

parties by Will dated 13.11.1969 and the plaintiff cannot force the defendants to sell their share(ground floor) in the property. The defendants are within their right to deal with their share(ground floor) in the suit property in whatever manner they deem fit. The plaintiff has no right to dictate terms to the defendants. The conduct of the plaintiff disentitles him to any relief as he is harassing the 79 year old mother of defendant no.2 and not allowing her to live peacefully in her portion in the suit property.

....

18The shares of the parties are already described in the Will. Each has one floor, which is being separately enjoyed since beginning. However, if this Hon'ble Court adjudicates that no partition has taken place, then the defendants are agreeable to the suit property being partitioned in accordance with registered Will. With regard to prayer C, it is submitted that partition by metes and bounds has already taken place. However, if this Hon'ble Court adjudicates that no partition has taken place, then it is submitted that partition by metes and bounds is possible as per the registered Will and the subsequent mutation and there is no requirement of selling the suit property and distributing the sale proceeds....”

6. On the last date of hearing, counsel for the defendants had made a statement that only the ground floor of the suit property belongs to the defendants along with 1/3rd undivided share in the land. Matter was adjourned to enable the plaintiff to seek instructions. Counsel for the parties submit today that it is not necessary to pass a Preliminary Decree and a Final Decree may be passed as the parties are in settled peaceful possession of their respective portions and thus, it is not necessary to either appoint a Local Commissioner or to partition the suit property by metes and bounds. Counsel for the parties also submit that the plaintiff would not interfere in the peaceful physical possession

of the defendants and the defendants will not interfere in the peaceful physical possession of the plaintiff. Both the parties also agree that they will allow access to each other for the purpose of water tanks (at the terrace), water and electricity meters and water motors(at the ground floor). The plaintiff will allow access to the defendants for the purposes of repair, etc. of water tanks on the terrace while the defendants will allow access to the plaintiff for the purpose of reading of the electricity meters and water meters and the parties will facilitate maintenance of submersible pump and water pump in the ground floor.

7. As prayed, the present suit is decreed. The plaintiff will be entitled to $\frac{2}{3}$ rd share of the suit property and $\frac{2}{3}$ rd share in the plot of land, the defendants will be entitled to $\frac{1}{3}$ rd share of the suit property together with $\frac{1}{3}$ rd share in the plot of land.
8. Plaintiff will allow access to the defendants to the terrace for repair etc. of the water tanks. Defendants would allow access to the plaintiff for the purpose of reading of electricity and water meters and for repair etc. of water pump.
9. Decree Sheet be drawn up accordingly.

I.A.10050/2015(u/O XXXIX Rule 2A CPC)

10. The application is dismissed as not pressed.

I.A.17423/2013(u/O XXXIX Rule 1 & 2 CPC)

11. In view of the fact that the suit has been decreed, no further orders are required to be passed in this application.
12. The application stands disposed of.

G.S.SISTANI, J

SEPTEMBER 22, 2016

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