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

+ CS(OS) 1352/2012 & IA No. 12861/2016 (under Section 151 CPC by defendant), IA 14011/2016 (under Order XXII Rule 4 (3) by defendant no.2) and IA No. 8378/2017 (under Section 151 CPC by plaintiff) & IA No. 14316/2017 (under Order VI Rule 17 readwith Order VIII Rule 2) & CC No. 12/2014

PRITI TANDON & ANR Plaintiffs
Through Mr. Arvind Nigam, Sr. Advocate with
Mr. Abhimanyu Walia and Ms.
Ayshwarya Chander, Advocates
Versus

SNEHLATA Defendant
Through Mr. Sai Chanakya, son of the
defendant

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **04.12.2017**

1. In this suit by two sisters, namely, Priti Tandon and Premlata Mehrotra, against their another sister namely, Snehlata, for partition of the property No. C-31, West End Colony, New Delhi, claiming the same to have been owned by the father of the parties who died intestate and leaving three daughters only as his natural heirs, the defendant Snehlata filed a Counter Claim for partition of another property bearing No. B-9, West End Colony, New Delhi.

2. Vide order dated 5th December, 2013 on the application of the plaintiffs under Order XII Rule 6 of the Code of Civil Procedure, 1908

(CPC), a preliminary decree for partition declaring the two plaintiffs, namely, Priti Tandon and Premrata Mehrotra and the sole defendant, namely Snehlata to be having 1/3rd undivided share each in property No. C-31, West End Colony, New Delhi was passed and the Counter Claim ordered to be tried separately.

3. Over the years, the plaintiff no.1 Priti Tandon has died and has been substituted by her son and daughter Bhaskar Mukherjee and Devyani Sheetak respectively. The sole defendant Snehlata has also died and has been substituted by her son Sai Chanakya. Sai Chanakya preferred RFA (OS) No. 44/2014 against the preliminary decree for partition, which was dismissed vide order dated 4th April, 2014.

4. Defendant Sai Chanakya appearing in person states that he per se had no objection to the preliminary decree for partition and had filed the appeal aforesaid only against the interim order on some other applications also passed on 5th December, 2013.

5. The senior counsel for the plaintiffs states that Sai Chanakya preferred SLP (Civil) No. 21025/2014 to the Supreme Court and which was dismissed *in limine* on 19th August, 2014.

6. This Court, after passing the preliminary decree aforesaid, also directed the parties to file their respective proposals for division of property No. C-31, West End Colony, New Delhi.

7. Vide subsequent order dated 18th November, 2014, a Commissioner was appointed to explore the possibility of division of property No. C-31, West End Colony, New Delhi by metes and bounds.

8. This court vide order dated 15th May, 2015 held that the property no. C-31, West End Colony, New Delhi could not be divided by metes and bounds and directed the property to be put to open auction.

9. However, instead of a final decree for partition of sale of the property and distribution of sale proceeds in accordance with shares declared in the preliminary decree for partition being passed as is the mandate of Section 8 of the Partition Act, 1893, execution of the said final decree for partition so deemed to have been passed was attempted in the suit itself by first appointing a valuer.

10. The aforesaid procedure adopted has resulted in, IA No. 8378/2017 being filed by the plaintiffs seeking a direction to the defendant Sai Chanakya to sign the documents prepared by the plaintiffs for mutation of the suit property from the name of the predecessor of the parties to the name of the parties and for conversion of leasehold rights in the land underneath the property into freehold and IA No. 14316/2017 being filed by the defendant Sai Chanakya for amendment of the written statement.

11. The defendant Sai Chanakya appearing in person states that he has come to know that the property no.C-31, West End Colony, New Delhi was earlier allotted in the name of Premlata Mehrotra and property No. B-9, West End Colony, New Delhi was originally allotted in the name of Col. R.K.Tandon, being the father of original parties to the suit; subsequently, by an exchange, property No.C-31 was taken in the name of Col.R.K.Tandon and property no. B-9 was taken in the name of Premlata Mehrotra.

12. On effect of the same being enquired, the defendant states that the said facts show that property no. B-9 though in the name of Premlata Mehrotra is also of Col. R.K.Tandon and the defendant thus has a right therein as well; it is further stated that the same shows illegal acts having been committed.

13. Not only is the written statement not permitted to be amended, after a preliminary decree for partition has been passed and final decree for partition is deemed to have been passed but even otherwise, aforesaid pleas have no bearing on, as far as partition of property No. C-31 is concerned, in which the defendant also admits that the two plaintiffs and the defendant have 1/3rd share each.

14. Though a formal final decree for partition of property No. C-31 has not been passed or ordered to be passed but Section 8 supra provides that any order for sale made by the court shall be deemed to be a decree within the meaning of Section 2 of the CPC. Thus, the order dated 15th May, 2015, though not passing a final decree for partition but directing sale of the property is a deemed final decree for partition. The said error which has crept in the proceedings is corrected today by directing a final decree for partition of the property No. C-31, West End Colony, New Delhi by sale of the said property and by distribution of sale proceeds in terms of the preliminary decree for partition dated 5th December, 2013 to be passed.

15. On enquiry, it is informed that the two plaintiffs as well as the defendant are in physical possession of the property and there is no stranger in possession of the property.

16. It is further directed that upon sale of the property, all the parties shall deliver vacant peaceful physical possession of the portion of the property in their respective possession to the purchaser/s and if fail to do so, delivered possession shall be liable to be removed therefrom as if in execution of a decree for possession.

17. The parties, if so desire, shall be entitled to, before having the property auctioned make inter se bids with respect to each other's share in the property and in which case, the selling party shall deliver vacant peaceful physical possession to the purchasing party/parties.

18. No costs. Decree sheet be drawn up.

19. The plaintiffs may make the claim as made in IA No. 8378/2017 in execution, if any required, to be filed of the final decree for partition. It will also be open to the plaintiffs to, while making the said prayer in execution, also rely on the undertaking given by the defendant on 29th March, 2017. All defences will remain open to the defendant.

20. As far as IA No. 14316/2017 of the defendant under Order VI Rule 17 of the CPC is concerned, the defendant is at liberty to file the same in the Counter Claim instead of in the suit.

21. IAs no.8378/2017 and 14316/2017 are disposed of.

22. The suit CS(OS)No. 1352/2012 is disposed of.

23. If the Counter Claim file has not been separated as yet, the suit file be retained for disposal of the Counter Claim.

CC No. 12/2014

24. The senior counsel for the defendants namely, Priti Tandon and Premlata Mehrotra on enquiry as to the proceedings in the Counter Claim

since 5th December, 2013 states that no issues have been framed and rather IA No. 14011/2016 under Order XXII Rule 4 for dismissal of the Counter Claim as having abated for non-impleadment of heirs of Priti Tandon and IA No. 12861/2016 under Order VII Rule 11 of CPC for rejection of the Counter Claim are pending consideration.

25. I have enquired from the senior counsel for the defendants as to when were the legal heirs of Priti Tandon substituted in the suit.

26. The senior counsel for the defendants has drawn attention to the order dated 21st January, 2015 in the suit.

27. For the sake of expediency, the senior counsel for the defendants under instructions has been persuaded to not raise the said technical argument.

28. The plaintiff in the counter claim namely Sai Chanakya is permitted to file amended memo of parties showing the substituted legal heirs of defendant no.1 Priti Tandon in the Counter Claim.

29. IA No. 14011/2016 is disposed of.

30. The senior counsel for the defendants on being asked the ground urged for rejection of the Counter Claim states, i) that though Premrata is admittedly in exclusive possession of the property No.B-9, West End Colony, New Delhi and has been exclusively realising the rent of the property for the last more than 40 years but ad valorem court fee on the claim for partition therefor has not been paid; ii) that the claim for declaration is barred by time and; iii) that the relief claimed is barred by The Prohibition of Benami Property Transactions Act, 1988.

31. Mr. Sai Chanakya states that he will file an application for amendment of the counter claim to take the pleas as sought to be taken for amendment of the written statement in the suit aforesaid.

32. I have cautioned defendant Sai Chanakya that the same have no bearing to the aforesaid grounds on which rejection of the Counter Claim has been sought and he will in any case have to pay the requisite court fees.

33. On request of defendant Mr. Sai Chanakya for time to consider, list the matter on 12th December, 2017.

RAJIV SAHAI ENDLAW, J

DECEMBER 04, 2017

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