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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 515/2017

KALA DEVI

..... Appellant

Through: Mr. Nagendra Kasana, Mr. Sunil
Chauhan, Mr. Vishwajeet Tiwari,
Advocate

versus

NANAK CHAND

..... Respondent

Through: Mr. Rajesh Bhatia, Advocate

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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25.08.2017

The present appeal has been preferred by the appellant against the judgment and preliminary decree dated 30th January 2017. The facts of the present case are that Smt. Sita Devi had been allotted the property in dispute and had expired on 28th October 1992. The plaintiff/respondent, being the son of Smt. Sita Devi sought the partition of the property claiming his share to the extent of 1/4th share in the property. Defendant/appellant happened to be the widow of deceased son of Smt. Sita Devi.

The court below passed the preliminary decree holding that the plaintiff/respondent as well as defendant/appellant are entitled for 1/4th share each in the property.

The only grouse of the appellant is that before passing the preliminary decree of partition, the court below had called for the

valuation report and as per the valuation report, value of the property happened to be Rs.51,75,142/- but the plaintiff/respondent had not affixed the court fee accordingly.

This court observes from the impugned judgment that the learned trial court has framed Issue No.7, which reads as under:-

“Whether the plaintiff is entitled for the recovery of Rs.1.53 lacs against defendant No.1 and 2 towards share of the plaintiff in the rent as prayed in prayer clause (c)?”

However, the trial court has deferred the adjudication of the aforesaid issue to the stage of passing the final decree and the same has not been decided.

Counsel appearing for the respondent states at bar that in case, at the time of passing the final decree, if any amount is found to be payable towards court fee, the plaintiff/respondent shall pay the proper court fee.

It has further been submitted that as per the plaint, the plaintiff has valued the suit for the partition for a sum of Rs.10 lacs but as per the valuation conducted by the court, it is found much more and as per that, the plaintiff/respondent has to pay court fee on his share of Rs.2.50 lacs plus for recovery of Rs.1,53,000/-. In this regard, counsel appearing for plaintiff/respondent further undertakes that whatever the relief is granted to the plaintiff at the time of passing the final decree, he shall pay the additional court fee on the relief prayed.

It has been informed that the court below is already proceeding with the process of passing final decree. The parties to the suit shall be at liberty to raise any objection before the trial court during pendency of the suit and before passing final decree in the suit.

In view of the facts and circumstances of the present case, the judgment and preliminary decree passed by the court below is upheld with observations, as aforesaid.

The appeal stands disposed of. Decree sheet be prepared accordingly.

P.S.TEJI, J

AUGUST 25, 2017
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