

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 473/2016 & IA No.11601/2016 (u/S 151 CPC) & 11602/2016
(u/O XXXIX R-1&2 CPC)

MANJULA NEGI Plaintiff

Through: Mr. Arvind K. Gupta, Mr. Anshul
Garg and Ms. Alpana Malik, Advs.

Versus

KRISHAN CHANDRA NEGI & ORS Defendants

Through: Mr. Bhuvan Gugnani and Ms. Nupur
Mantoo, Advs. for D-1,2,4,6&7.
Mr. Abhijeet Bhagat, Adv. for D-3.
Ms. Geeta Mehrotra and Mr. Mohit
Verma, Advs. D-8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.05.2017**

1. The counsel for the plaintiff states that only the defendant No.5 Ms. Mallika Walsh is reported to be unserved but the plaintiff has filed affidavit of service qua the defendant No.5 Ms. Mallika Walsh also. It is further stated that the defendant No.5 Ms. Mallika Walsh is the sister of the plaintiff and the plaintiff and defendant No.5 Ms. Mallika Walsh jointly have 1/6th share in the property and defendant No.5 Ms. Mallika Walsh is not adversarial to the plaintiff.

2. In view of the aforesaid statement, there is no reason to disbelieve the affidavit of service. The defendant No.5 Ms. Mallika Walsh is also deemed to have been served with the summons of the suit; since none appears for her, she is proceeded against *ex-parte*.

3. The other defendants have already filed their written statements and to which replications have been filed by the plaintiff. However, the written statement of defendant No.3 is stated to be lying under objection. The same be got placed on record.
4. The suit is ripe for framing of issues.
5. Though neither counsel has proposed any issue but it is informed that all the defendants save defendant no.8 Rajinder Singh Solanki admit to the shares of plaintiff and defendants no.1 to 7 in the property as set out in the plaint.
6. The counsel for the plaintiff states that the plaintiff is thus entitled to a preliminary decree of partition of the suit property by declaration of the shares of the respective parties in the property.
7. It is further informed that defendant no.8 Rajinder Singh Solanki, who according to the plaintiff was a licensee in respect of the property inducted by the defendant no.3 Keshav Chandra Singh Negi and whom all the other defendants also admit to be the licensee, has staked claim of title by adverse possession in the property.
8. The plaintiff, in this suit, besides the relief of partition, has also sought the relief of recovery of possession of the property from the defendant no.8 Rajinder Singh Solanki.
9. The plaintiff however has paid court fees as per valuation of her share only in the property.
10. I have enquired from the counsels for the other defendants who have supported the case of the plaintiff, whether they desire to recover possession from the defendant no.8 Rajinder Singh Solanki and if so, they will also have to pay court fees of their share in the property.

11. The counsel for the defendants no.1,2,4,6 and 7 and the counsel for the defendant no.3 Keshav Chandra Singh Negi state that they will pay their share of court fees.

12. After the court fees is paid, it will be seen whether the relief of possession is to be put to trial.

13. The counsel for the plaintiff at this stage states that this suit be confined to the relief of partition and liberty be granted to the plaintiff to pursue the suit for the relief of possession against the defendant no.8 Rajinder Singh Solanki either by joining all the other defendants as plaintiffs or by joining them as co-defendants.

14. The other counsels including the counsel for the defendant no.8 Rajinder Singh Solanki have no objection thereto.

15. Accordingly, a preliminary decree of partition of land ad-measuring 4 Bighas 8 Biswas situated at village Kakrola, Najafgarh Road, Delhi now known as property No.9/10, Vipin Garden, Uttam Nagar, New Delhi is passed, declaring the following persons to be having shares therein as indicated against their names:

- (a) Plaintiff Mrs. Manjula Negi and defendant No.5 Mrs. Mallika Walsh together having 1/6th share.
- (b) Defendants no.1,2,3 and 4 viz. Krishan Chandra Negi, Naresh Chandra Negi, Keshav Chandra Singh Negi & Ramesh Chandra Singh Negi having 1/6th share each.
- (c) Defendant no.6 Mrs. Jyoti Bisht and defendant no.7 Nitin Bisht together having 1/6th share.

16. Decree sheet be prepared.

17. The counsels state that since the defendant no.8 Rajinder Singh Solanki is in possession, the land is not capable of division by metes and bounds and a final decree for partition be also passed, of sale of the property and distribution of sale proceeds amongst the plaintiff and the defendants nos.1 to 7 as per their shares declared in the preliminary decree.

18. Allowed.

19. A final decree for partition of land ad-measuring 4 Bighas 8 Biswas situated at village Kakrola, Najafgarh Road, Delhi now known as property No.9/10, Vipin Garden, Uttam Nagar, New Delhi is passed, of sale of the said property and distribution of sale proceeds amongst the plaintiff and the defendants no.1 to 7 as per their shares declared in the preliminary decree and with the clarification that all the parties shall be entitled to participate in the sale of the property and if any of them is the highest bidder, shall be entitled to purchase the share of the others on the same terms on which bids from outsiders are invited.

20. Decree sheet be prepared.

21. This decree for partition is without prejudice to the rights if any of defendant no.8 Rajinder Singh Solanki as pleaded in his written statement.

22. The suit, insofar as for the relief of recovery of possession, is dismissed as withdrawn with liberty to the plaintiff and/or the defendants no.1 to 7 to take fresh/separate proceedings for removal of the defendant no.8 Rajinder Singh Solanki from the property or for recovery of possession of the property.

23. To enable the plaintiff and / or defendants no.1 to 7 to institute appropriate proceeding, notwithstanding the aforesaid, the defendant no.8 Rajinder Singh Solanki who claims to be in possession and control of the entire property is restrained till 15th July, 2017 from parting with possession and / or creating any third party interests in the property.

The parties to bear their own costs.

RAJIV SAHAI ENDLAW, J.

MAY 26, 2017

Bs/gsr..