

\$~7

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

+ FAO(OS) 164/2017 and CM No.20058/2017

% Date of decision : 5th September, 2017

KRISHAN MOHAN GUPTA Appellant
Through : Mr. S.C. Singhal, Adv.

versus

OM PRAKASH KHANDELWAL Respondent
Through : Mr. Shekhar Dasi, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. We have heard ld. counsel for the parties in this appeal.
2. By way of this appeal, the appellant has laid a challenge to observations made by the ld. Single Judge in the order dated 13th April, 2017 passed in CS(OS)No.82/2017 whereby a preliminary decree holding that the parties held equal shares in the property bearing Municipal No.B-248, Naraina Industrial Area, Phase-I, New Delhi, was passed. It has been submitted by Mr. S.C. Singhal, ld. counsel for the appellant that he has no objection to the order dated 13th of April 2017, to the extent of the preliminary decree or the appointment of a local commissioner by the court to suggest the

partibility of the property and mode of partition.

3. It is submitted that the appellant has objection to the observations made by the Id. Single Judge in the order dated 13th April, 2017 to the effect that “*passing of the preliminary decree will not disturb the business of the partnership firm*”. This observation, which has been objected to by Id. counsel for the appellant, was made in the context of partnership business being run from the said property under the name and style of M/s Surya Industrial Corporation, a partnership firm of the appellant/plaintiff and the wife - Geeta Devi Khandelwal of the respondent/defendant.

4. It is an admitted position that the suit property was purchased in the name of the appellant/plaintiff - Shri Krishan Mohan Gupta and the respondent/defendant - Om Prakash Khandelwal. Apart from this relationship, Shri Krishan Kumar Gupta had also entered into a partnership with Geeta Devi Khandelwal wife of Shri Om Prakash Khandelwal which is running a partnership business in the name and style of M/s Surya Industrial Corporation from the suit property. Disputes appear to have arisen between the parties. Resultantly, the plaintiff instituted CS(OS)No.82/2017 on the original side of this court seeking partition of the suit property as well as exclusive possession of his determined share.

5. Apart from the litigation relating to the suit property, it is submitted by Mr. S.C. Singhal, Id. counsel for the appellant/plaintiff that his client has already caused a notice for dissolution of the partnership as well as termination of the tenancy of the partnership firm in the suit property, to be served upon the respondent/defendant,

as well as his wife Smt. Geeta Devi Khandelwal. It is submitted by Mr. Singal that on account of the pendency of the suit on the original side of this court, he has not initiated litigation in respect of the partnership firm.

6. The position which obtains, therefore, is that in CS(OS)No.82/2017 only the shareholding of the parties in the suit property bearing Municipal No.B-248, Naraina Industrial Area, Phase-I, New Delhi stands recognized and established as on date. So far as the position of the business of the partnership firm is concerned, only a dissolution notice has been served and *status quo* has been maintained.

7. We have put it to Id. counsel for the parties that passing of the preliminary decree and the final decree after consideration of the partibility of the suit property by metes and bounds cannot *ipso facto* result in eviction of the partnership firm from the suit property. Mr. S.C. Singhal, Id. counsel for the appellant is not able to dispute the correctness of this proposition.

8. In view thereof, the observations made by the Id. Single Judge in the order dated 13th April, 2017 cannot be faulted on any legally tenable grounds. However, in order to avoid any doubt, it is clarified that passing of the preliminary decree as well as final decree, after culmination of the proceedings in accordance with law in CS(OS)No.82/2017, shall not tantamount to an order of eviction of M/s Surya Industrial Corporation from the property bearing Municipal No.B-248, Naraina Industrial Area, Phase-I, New Delhi.

9. Of course, the pendency of the proceedings in

CS(OS)No.82/2017 cannot and would not come in the way of the appellant/plaintiff taking any action, as he may be advised, in accordance with law, so far as the dissolution of the partnership business and eviction of partnership firm from the said property.

This appeal is disposed of in the above terms. The pending application also stands disposed of.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 05, 2017

aj

नित्यमेव जयते