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

+ C.R.P. 213/2016 & CM No.47813/2016 (for stay)

SHASHI

..... Petitioner

Through: Mr. H.S. Dahiya & Mr. Neeraj
Dahiya, Advs.

Versus

SAROJ MADAN & ORS

..... Respondents

Through: Mr. Sarwesh, Adv. for R-1 & 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.07.2017

CM No.47814/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

C.R.P. 213/2016 & CM No.47813/2016 (for stay)

3. This Revision Petition under Section 115 of the CPC impugns the order dated 10th November, 2016 in Suit No.626/2010 (New No.34823-16) of the Court of Senior Civil Judge (SCJ)-cum-Rent Controller, District North, Rohini Courts, Delhi and seeks a direction to the suit Court to decide the issue of “exact area of the suit property as per plaint”.
4. The petition came up first before this Court on 23rd December, 2016 and thereafter has been listed on several occasions; though notice thereof has not been issued as yet, but the counsel for the respondents appears on advance notice.

5. From a reading of the impugned order dated 10th November, 2016, it transpires that a preliminary decree for partition of immovable property was passed in the suit; a Commissioner was appointed to explore the possibility of partition of the property by metes and bounds; the petitioner / defendant filed objections to the report of the said Commissioner; though no merit was found in the objections of the petitioner / defendant and the same were rejected but the report of the Commissioner was not found to be satisfactory; accordingly, vide the impugned order another Commissioner was appointed “.....for partition by metes and bounds. He shall be supplied with the copy of the judgment, site plan and the report of the LC for the effective partition whereafter final decree shall be drawn on that basis. He shall visit the suit property on 10.12.2016 at 11 a.m. to conduct the partition by metes and bounds and deliver the possession of the respective portions”.

6. It is not understandable as to how without a final decree for partition, the Commissioner could be directed to conduct the partition by metes and bounds and deliver the possession of the respective portions. The said portion of the order is clearly erroneous. A copy of this order be sent to the learned SCJ who has authored the order with a request to be careful in future.

7. Be that as it may, the counsel for the respondents states that the Commissioner appointed vide the impugned order dated 10th November, 2016 reported that the property was incapable of partition by metes and bounds and which report was accepted and now the property has been ordered to be auctioned. He has in this regard handed over in the Court a

copy of the order dated 6th July, 2017 in the suit from which this petition arises, appointing an auctioneer to auction the property.

8. The counsel for the petitioner though agrees that owing to the aforesaid development this petition, insofar as challenging the order dated 10th November, 2016, has become infructuous but contends that his objection which was dismissed vide the order dated 10th November, 2016 was that the area of the property had not been mentioned. He states that even while directing auction of the property vide order dated 6th July, 2017, the area of the property has not been mentioned.

9. The order dated 10th November, 2016 dismissed the objection of the petitioner observing that the Commissioner first appointed had given proper measurements in his report including length and breadth of the property and by simple multiplication, area of the property was capable of being calculated. It was further observed that the site plan of the property was also on record and which was sufficient to identify the property with respect to which the preliminary decree for partition was passed.

10. To consider, whether to decide the said question in this proceeding, I have enquired from the counsel for the petitioner / defendant whether he is impugning the auction of the property.

11. The counsel for the petitioner / defendant states that the first appeal preferred by the petitioner / defendant against the preliminary decree for partition has been dismissed and he is in the process of preferring the second appeal and will seek stay of auction therein only.

12. In this view of the matter, it is deemed appropriate not to enter into the said question in this proceeding, leaving it open to the petitioner /

defendant to agitate the same in the proceeding being filed by him.

13. The counsel for the petitioner / defendant insists upon arguing the said point. However a perusal of the judgment passing the preliminary decree for partition does not show any issue qua identity of the property or area of the property having been framed. The petitioner cannot at this stage be permitted to dispute the same.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 27, 2017

‘gsr’..