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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 722/2017

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8th December, 2017

KAMAL KANT KATARIA & ANR

..... Appellants

Through: Mr. Arvind Kr. Gupta and Mr.
Gautam Choubey, Advocates.

versus

RUPENDRA KATARIA & ORS

..... Respondents

Through: Mr. Mohinder Mohan, Adv. for
R-1 with R-1 in person.

Mr. R.S.Kela, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 CPC is filed by the defendant nos.1 and 2 in the suit/brothers impugning the judgment of the trial court dated 18.4.2017 by which the trial court has passed a final decree with respect to a total of four properties as stated in para 9 of the impugned judgment. This para 9 of the impugned judgment reads as under:-

“(9) This being the background and in view of the no objection given by the plaintiff and the defendant no.1 and

2, the final decree is being passed in respect of all the immovable properties left behind by late Hari Chand Kataria i.e property No.**B-201, Derawal Nagar, Delhi-110007** (154 square yards); property No.**A-155, Nehru Kutia, Malkaganj, Delhi** (30 to 40 square yards); property No. **242, Main Bazar, Subzi Mandi, Delhi** and property at **Bhagirath Place**. I now proceed to decide the possible modes of partition of the said properties as under.”

2. Learned counsel for the appellants/defendant nos. 1 and 2 contends that the property situated at 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi is a property in the exclusive ownership of the appellants/defendant nos. 1 and 2 and the trial court by the impugned judgment could not have passed a preliminary and final decree without any trial for this property simply by showing this property as being in the hotchpotch of the properties belonging to the father of the parties i.e it is argued that a partition decree can be passed only with respect to a property which is admitted to be of the father of the parties, and no decree can be passed with respect to a property which is not admitted to be of the father of the parties but is pleaded to be the exclusive and self-owned property of the appellants/defendant nos. 1 and 2. It is further argued that there was no trial and no finding of the property no. 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi being the property of the father and available for partition to his children who were the parties to the suit. It is argued that without deciding disputed questions of fact

the property no. 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi being or being not the property of the father, this property could not have been held to be a property of which preliminary and final decree could be passed.

3. Learned counsel for the respondents very fairly concedes that in an affidavit filed by the appellants/defendant nos.1 and 2 it was not admitted that the property 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi belonged to the father Late Sh. Hari Chand Kataria and in this affidavit the Subzi Mandi property has been stated to be exclusively owned property of the appellants/defendant nos. 1 and 2. Therefore, in my opinion, this property could not be held to be of the father without evidence being led by the parties as to whether or not this property is belonged to the father or belonged exclusively to the appellants/defendant nos. 1 and 2.

4(i) Learned counsel for the respondent no.1/plaintiff states that one other error has also been committed by the trial court while passing the impugned judgment by adding the property bearing no. 1840/1, Bhagirath Place, Delhi as a property of the father because in fact the respondent no.1/plaintiff nowhere had admitted that this property was a property of the father and therefore was available to all the children of

the father after the death of the father intestate. It is argued that the sale deed of this Bhagirath Place property is in the name of the respondent no.1/plaintiff, and therefore, this property was not the property of the father.

(ii) In the opinion of this Court even so far as this Bhagirath Place property there could not be a preliminary and final decree passed without trial and without deciding the issue that whether or not this Bhagirath Place property belonged to the father Late Sh. Hari Chand Kataria or was exclusively owned by the respondent no.1/plaintiff.

5. The sequitur of the aforesaid discussion is that the impugned judgment will stand as a final decree of partition with respect to the two properties namely B-201, Derawal Nagar, Delhi (154 square yards), property No.A-155, Nehru Kutia, Malkaganj, Delhi (30 to 40 sq. yds) but the preliminary and final decree will not operate with respect to the two properties which are claimed by the appellants/defendant nos. 1 and 2 and respondent no.1/plaintiff as their exclusive properties, namely 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi and 1840/1, Bhagirath Place, Delhi.

6. It is also noted that the final decree will however stand passed with respect to movable properties which are subject matter of the impugned judgment as there is no dispute for the same.

7. Accordingly, the impugned judgment and decree is set aside to the extent of the aforesaid two properties namely 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi and 1840/1, Bhagirath Place, Delhi pleaded to be in the exclusive ownership of the appellants/defendant nos. 1 and 2 and respondent no.1/plaintiff, and that whether the stands of the appellants and respondent no.1/plaintiff are correct as regards these two properties which they claim to be in exclusive ownership or whether these properties belong to the father, will be aspects on which issues will be framed and these issues will be decided after parties are given opportunity to lead evidence in support of their respective cases.

8. Accordingly the impugned judgment and decree dated 18.4.2017 is set aside to the extent as stated above. With respect to the properties at 242, Main Bazar, Subzi Mandi, Dahiwala Katra, Delhi and 1840/1, Bhagirath Place, Delhi trial court will now give opportunities to the parties to file documents, and thereafter the issues will be framed with respect to the aforesaid two properties and which issues will be

decided after trial and giving opportunity to the parties to prove their cases in accordance with law.

9. Parties to appear before the District and Sessions Judge, Central, Tis Hazari Courts, Delhi on 16.1.2018 and the District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law and the observations made in the present judgment.

10. The appeal is accordingly allowed and disposed of to the extent as stated above.

11. As agreed to by the counsels for the parties let the parties appear before the Delhi High Court Mediation and Conciliation Centre on 20.12.2017 at 4.00 PM inasmuch as there is a possibility of the disputes of the parties being resolved by settlement out of Court.

VALMIKI J. MEHTA, J

DECEMBER 08, 2017/ib