

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

% **Date of decision: 6th September, 2017.**

+ **CM(M) 978/2017**

ROHIT MAHAJAN **Petitioner**

Through: Mr. S.C. Singhal, Adv.

Versus

RAJIV BHARDWAJ **Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.32533/2017 (for exemption)

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

CM(M) 978/2017 & CM No.32534/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 14th July, 2017 in Civil Suit No.17583/2016 of the Court of Additional District Judge-03 (ADJ), Dwarka Courts, New Delhi] of dismissal of the application filed by the petitioner / defendant under Order VII Rule 10 read with Section 151 of the CPC.

4. The counsel for the petitioner has been heard.

5. The respondent / plaintiff instituted the suit from which this petition arises, “for division / separation and recovery of physical possession” of half undivided portion of second floor of property bearing No.B-1/308, Janak Puri, New Delhi-110058 and for the relief of mandatory injunction

restraining the petitioner / defendant from transferring, alienating and / or parting with possession of the said half portion of the second floor to any other person, pleading i) that one Sh. Kaptan Singh Rathi had represented to the respondent / plaintiff that he owned the said second floor of property No.B-1/308, Janak Puri, New Delhi-110058 and offered to sell the same to the respondent / plaintiff; ii) that the said Kaptan Singh Rathi with dishonest intention fixed an exorbitant price of the said second floor, which was more than five times of the existing market price and since the respondent / plaintiff was then not aware of the market price as well as the exact status of the ownership, on *bona fide* belief, signed the agreement to sell dated 6th February, 2015; iii) that however later on the respondent / plaintiff came to know that the said agreement was got executed from the respondent / plaintiff on misrepresentation and concealment of the fact that the said Kaptan Singh Rathi was not having any ownership or title to the said second floor of property No.B-1/308, Janak Puri, New Delhi-110058; iv) that the agreement dated 6th February, 2015 was thus a void document and the respondent / plaintiff is not bound by the same; v) that the respondent / plaintiff thereafter learnt that the petitioner / defendant was the absolute owner in possession of entire property No.B-1/308, Janak Puri, New Delhi-110058 aforesaid and approached the petitioner / defendant for purchase of half undivided portion of second floor of the said property; vi) that vide registered sale deed dated 13th April, 2015, the respondent / plaintiff purchased half undivided share of second floor of the property from the petitioner / defendant for a total consideration of Rs.56,50,000/-; vii) that under the sale deed, the petitioner / defendant handed over vacant physical possession of the said half undivided portion of the second floor of the said

property to the respondent / plaintiff, as also recorded in the sale deed; viii) that however, since the construction of the second floor was not completed at that time, the actual physical possession was not available and not received by the respondent / plaintiff; ix) that though the construction has since been completed but despite repeated requests of the respondent / plaintiff, the petitioner / defendant had failed to deliver possession; x) that the petitioner / defendant on the contrary, in connivance with the aforesaid Sh. Kaptan Singh Rathi, filed a suit against the respondent / plaintiff and pending in the Court of Sh. R.K. Jangala, ADJ, Tis Hazari Courts, Delhi for cancellation of the registered sale deed dated 13th April, 2015 aforesaid in favour of the respondent / plaintiff.

6. The respondent / plaintiff, on the pleas aforesaid, claimed *inter alia* the following reliefs in the suit:

- “a. pass a decree of division / demarcation of the half portion of second floor of property bearing No.B-1/308, Janak Puri, New Delhi-110058.
- b. pass a decree of possession by directing the defended (*sic* defendant) to deliver the half divided portion of the second floor of property bearing No.B-1/308, Janak Puri, New Delhi-110058.”

7. The contention of the counsel for the petitioner / defendant is that the respondent / plaintiff on the pleas aforesaid in the plaint ought to have valued the suit for the purpose of jurisdiction at Rs.3,75,00,000/-, being the sale consideration mentioned in the agreement to sell by Sh. Kaptan Singh Rathi, of the entire second floor, in favour of the respondent / plaintiff. It is contended that the suit, valued for the purpose of court fees and jurisdiction for the reliefs aforesaid at Rs.56,50,000/-, is not correctly valued for the

purpose of jurisdiction. It is contended that since the suit for the purpose of jurisdiction should have been valued at Rs.3,75,00,000/-, the Court of the ADJ before whom the suit is pending and whose maximum pecuniary jurisdiction is Rs.2 crores, is not competent to entertain the suit.

8. The counsel for the petitioner / defendant, on being asked the provisions of the Suits Valuation Act, 1887 which determine the valuation for the purpose of jurisdiction of the reliefs aforesaid, has drawn attention to, ***Jagdish Pershad Vs. Joti Pershad*** 1975 RLR 203 followed in ***Ramesh Chand Bhardwaja Vs. Ram Parkash Sharma*** AIR 1991 Delhi 280 and in ***Zahoor Ahmed Vs. Rakhi Gupta*** 2012 (188) DLT 9, laying down as under:

“22. [Section 9](#) of the Suits Valuation Act, 1887 (vii of 1887) envisages that when the subject-matter of suits of any class, other than suits mentioned in the [Court-fees Act](#), 1870, [section 7](#), paragraphs v and vi, and paragraph x, clause (d), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may with the previous sanction of the State Government direct that the suits of that class shall, for the purposes of Court Fees Act, 1870, and of the [Suits Valuation Act](#) and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in that behalf.

23. Pursuant to its aforesaid power the Punjab High Court has framed Rule 8 in Chapter 3-C of the Punjab High Court Rules and Orders, Volume 1, which are applicable to Delhi, providing for the value regarding court-fee and jurisdiction which a plaintiff is required to state in the plaint in suits for partition of property.

24. It would, therefore, be seen that so far as value for the purpose of jurisdiction is concerned, for the purposes of [Suits Valuation Act](#), 1887, value of the whole of the property, sought to be partitioned, as determined by [sections 3, 8](#) and [9](#) of the Suits Valuation Act has to be stated.

25. [Sections 8](#) and [9](#) of the Suits Valuation Act indicate that value for court-fee and jurisdiction must be the same except in case of contrary rules made under [section 9](#) of the Suits Valuation Act. Rule 8

of Chapter 3-C of Punjab High Court Rules and Orders, Volume I, being a contrary rule requiring that value for the purposes of jurisdiction shall be the value of the whole of the property, the trial Court was wrong in determining the value for the purpose of jurisdiction at Rs.22,910/- being the value of the 1/7th share of the respondent in the joint family property. The value for the purpose of jurisdiction should have been stated as the value of the whole of the property in term of Rule 8 of Chapter 3-C of Punjab High Court Rules and Orders, Volume I, in accordance with [section 9](#) of the Suits Valuation Act.

26. I am fortified in the above view from a decision of the Punjab & Haryana High Court in case [Mangal Dass v. Naunihal Shigh](#), 1974 PLR 255, in which it was observed that the jurisdictional value of suits for partition of property had to be determined on the value of the whole of the property in accordance with the provisions of Rule 8 of Chapter 3-C of Punjab High Court Rules and Orders, Volume I and provisions of [section 9](#) of the Suits Valuation Act.”

9. The aforesaid dicta deals with a suit for partition of immovable property. In a suit for partition of immovable property, the shares of the parties in the property have to be determined and on determination whereof a preliminary decree for partition is to be passed and whereafter the mode of partition has to be adjudicated.

10. On the averments aforesaid in the plaint in the present case and by virtue of the registered sale deed in favour of the respondent / plaintiff (and it is not disputed by the counsel for the petitioner / defendant also inasmuch as he has in his arguments repeatedly referred thereto and for setting aside cancellation whereof, the petitioner / defendant has filed the suit aforementioned) the share of the respondent / plaintiff in the second floor of property No.B-1/308, Janak Puri, New Delhi-110058 is one half undivided share. Thus, in the event of the respondent / plaintiff succeeding in the subject suit, no need for passing of a preliminary decree for partition would arise. The respondent / plaintiff also in the plaint is not seeking a decree for

partition but is seeking a decree for division / demarcation of the half portion of the second floor sold to the respondent / plaintiff under the sale deed aforesaid and is seeking possession of the said divided portion. I am therefore of the view that the relief claimed in the suit from which this petition arises does not fall in the genre of a relief of partition of immovable property and the judgments cited would have no application thereto.

11. The relief sought of demarcation of the half share of the respondent / plaintiff sold to the respondent / plaintiff vide the registered sale deed dated 13th April, 2015 is more in the nature of a decree for mandatory injunction and / or a decree for separation of the half share sold vide the registered sale deed aforesaid by the petitioner / defendant to the respondent / plaintiff and for which no specific provision is found in the Court Fees Act, 1870 or in the Suits Valuation Act. I am therefore unable to agree with the contention of the counsel for the petitioner/defendant that the valuation for the purpose of jurisdiction for the relief (a) claimed aforesaid in the plaint has to be valuation of the entire second floor of property No.B-1/308, Janak Puri, New Delhi-110058.

12. Be that as it may, I have also enquired from the counsel for the petitioner / defendant that the petitioner / defendant having sold the half undivided share of the second floor of property No.B-1/308, Janak Puri, New Delhi-110058 for consideration of Rs.56,50,000/-, whether not the valuation of the entire second floor of property No.B-1/308, Janak Puri, New Delhi-110058, even if were required to be taken for the purpose of jurisdiction, would be double thereof i.e. Rs.1,13,00,000/- and which would be within the maximum pecuniary jurisdiction of the Court of the ADJ.

13. The counsel for the petitioner / defendant has contended that the valuation of the entire second floor of property No.B-1/308, Janak Puri, New Delhi-110058 is Rs.3,75,00,000/-, being the sale consideration mentioned in the agreement to sell dated 6th February, 2015 between Sh. Kaptan Singh Rathi and the respondent / plaintiff. It is contended that the respondent / plaintiff, in the plaint, having admitted putting the signatures on the said agreement, is bound thereby and thus a case for return of the plaint under Order VII Rule 10 of the CPC is made out.

14. I am unable to agree. For the purpose of Order VII Rule 10 of the CPC, as also for the purpose of Order VII Rule 11, the averments in the plaint alone are to be looked at. (Reference can be made to ***Kuldeep Singh Pathania Vs. Bikram Singh Jaryal*** (2017) 5 SCC 345, ***Saleem Bhai Vs. State of Maharashtra*** (2003) 1 SCC 557, ***Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner*** (2004) 3 SCC 137, ***Popat & Kotecha Property Vs. State Bank of India Staff Association*** (2005) 7 SCC 510 and ***Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M.V. Fortune Express*** (2006) 3 SCC 100. As per the said averments, the consideration of Rs.3,75,00,000/- mentioned in the Agreement to Sell was by misrepresentation and the respondent / plaintiff has contended that the said Agreement to Sell in any case is void since Sh. Kaptan Singh Rathi was not authorized to sell the subject second floor.

15. The counsel for the petitioner / defendant has contended that the respondent / plaintiff has not claimed any declaration of the agreement to sell dated 6th February, 2015 being void.

16. In my view, there is no need for the respondent / plaintiff to seek any declaration with respect to the said agreement particularly when the respondent / plaintiff has instituted the suit from which this petition arises not on the basis of the said agreement to sell but on the basis of the registered sale deed. In this regard, it is significant to note that even the petitioner / defendant in the suit aforesaid filed by him or otherwise is not seeking specific performance of the agreement to sell dated 6th February, 2015 between Sh. Kaptan Singh Rathi and respondent / plaintiff but is merely seeking cancellation of the registered sale deed for consideration of Rs.56,50,000/- as bad on the ground of the respondent / plaintiff having got the same cancelled by misrepresenting that he will in terms of the agreement to sell with Sh. Kaptan Singh Rathi purchase the remaining half share also and which the respondent / plaintiff is now reneging out of.

17. In the aforesaid state of affairs, it cannot be said that the respondent / plaintiff is bound by the purchase consideration mentioned in the agreement to sell dated 6th February, 2015 between respondent / plaintiff and Sh. Kaptan Singh Rathi.

18. In the aforesaid scenario, the plea of the petitioner / defendant at best constitutes a defence of the petitioner / defendant to the suit and it cannot be said that the relief claimed is under-valued for it to be said that the respondent / plaintiff is to be required by this Court to correct the valuation for the purpose of jurisdiction.

19. It is deemed appropriate to clarify that it is not the contention of the counsel for the petitioner / defendant that the valuation for the purpose of court fees is bad or that the Court fees paid on the plaint is insufficient. The

only ground is that the suit should be valued at Rs.3,75,00,000/- and whereupon it will have to be tried by this Court and not by the District Judge.

20. I may in this regard also notice that the petitioner / defendant is also seeking stay of proceedings under Section 10 of the CPC in the suit from which this petition arises on the ground of the pendency of the previously instituted suit by the petitioner/defendant and which relief was declined and whereagainst the petitioner / defendant has preferred CM(M) No.967/2017 which was listed yesterday and while issuing notice whereof, I have *prima facie* observed that the two suits need to be consolidated and / or tried together. The possibility of the petitioner / defendant wanting to delay the adjudication of both the suits inasmuch as all legal professionals know that the disposal of a suit before this Court is much slower than the disposal before the Court of ADJ cannot be ruled out. Else, it is not understandable as to why the petitioner / defendant would be interested in having the suits transferred to this Court instead of being adjudicated by the ADJ.

21. The counsel for the petitioner / defendant has also argued that even if as per this Court, the valuation of the suit for the purpose of jurisdiction should be double of Rs.56,50,000/-, at least the respondent / plaintiff should be required to amend the valuation, even if the suit was to remain in the Court of ADJ. It is contended that else the time taken in the entire trial may be wasted.

22. Having held that the valuation for the purpose of jurisdiction would not be governed by the principles applicable to valuation of a suit for a decree for partition, I am unable to agree with the aforesaid contention also.

Moreover, even if the petitioner / defendant was to have any issue framed in the said respect in the suit and the same was to be decided in favour of the petitioner / defendant, resulting in a finding that the valuation of the suit was beyond the pecuniary jurisdiction of the learned ADJ, vide Section 21(ii) of the CPC, the finding on merit would be liable to be disturbed only if the same has resulted in a failure of justice owing to the suit being tried by the ADJ instead of by this Court. I am unable to fathom as to what would be the failure of justice in adjudication of the suit by the ADJ instead of by this Court.

23. No merit is thus found in the petition.

24. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 06, 2017

‘gsr’..

(corrected & released on 14th October, 2017)