

\$~10

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

+ **CS(OS) 44/2018**

MAN MOHAN

..... Plaintiff

Through: Mr. Harsh Kumar, Adv.

Versus

NARESH KUMAR & ANR

..... Defendants

Through: Mr. D.K. Sharma, Adv. for D-1.

Mr. Varad Dwevedi, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

21.05.2018

IA No.4978/2018 & 5048/2018 (both of plaintiff u/O VI R-17 CPC)

1. The counsel for the defendant No.1 and the counsel for the defendant No.2 have fairly stated that they have no objection.

2. Subject to the plaintiff paying costs of Rs.10,000/- to the counsel for each of the defendants, the applications are allowed and disposed of.

IA No.5049/2018 (u/S 152 CPC)

3. The counsel for the plaintiff states that owing to the plaint mentioning ground floor of property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi-92, in the order dated 1st March, 2018 also, the property has been described as such.

4. In view of the error having been permitted to be corrected in the plaint, this application also is allowed and the order dated 1st March, 2018,

insofar as with respect to property No. C-716, Ground Floor, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi-92, be read as with respect to property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi-92.

5. The application is disposed of.

IA No.2715/2018 (of plaintiff u/O XXXIX R-1&2 CPC)

6. Vide *ex-parte* order dated 1st March, 2018, the plaintiff as well as the two defendants were restrained from alienating, encumbering or parting with possession of properties (i) No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi-92; and, (ii) No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi-110006 and from making any additions, alterations, construction thereon.

7. The counsel for the defendant No.1 states that the defendant No.1 is in possession of ground and second floor of property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi and the plaintiff is in possession of the first floor of the said property and the defendant No.2 is in possession of the third floor of the property.

8. The counsel for the defendant No.2 confirms.

9. The counsel for the plaintiff states, that till 1st March, 2018, the plaintiff and the defendant No.1 were in joint possession of the second floor but the defendant No.1 took advantage of the error in the plaint and resultantly in the order dated 1st March, 2018 and has ousted the plaintiff from joint possession of the second floor.

10. Needless to state, that the counsel for the defendant No.1 controverts.

11. The counsel for the defendant No.1 states that the defendant No.1 is in possession of larger portion of property No.5320, Gali No.67, Haridhian

Singh Road, Reghar Pura, Karol Bagh, New Delhi and the plaintiff is in possession of lesser portion.

12. The counsel for the defendant No.2 states that the defendant No.2 is not in possession of the said property.

13. The counsel for the plaintiff states that there is no physical partition of the said property between the plaintiff and the defendant No.1.

14. Recording the aforesaid, the order dated 1st March, 2018 is made absolute till the decision of the suit and the parties are further directed to maintain *status-quo* qua possession as of today and as recorded above.

15. The application is disposed of.

CS(OS) 44/2018

16. The counsel for the plaintiff states that replication is required to be filed.

17. However, on enquiry, whether anything fresh is required to be pleaded, it is stated that the defendant No.2 has since filed suit against the plaintiff for cancellation of the documents in favour of the plaintiff with respect to property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi and which is pending in the Court of Additional District Judge (East), Karkardooma Courts, Delhi.

18. For that purpose, there is no need for replication.

19. The pleadings have been perused.

20. According to the plaintiff, the plaintiff and his another brother Suresh Kumar, had vide Sale Deed at page 27 of Part-III file acquired 50% undivided share in property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi; that Suresh Kumar vide registered

Relinquishment Deed, photocopy of which is at page 47 of Part-III file, has relinquished his 25% undivided share in the said property in favour of the plaintiff; that the plaintiff and the defendant No.1 are thus owners in equal share of the said property.

21. The counsel for the defendant No.1, though admits that the defendant No.1 along with yet another brother Nand Lal purchased the remaining 50% undivided share in the property aforesaid and Nand Lal released his 25% undivided share in favour of the defendant No.1, states that he has no knowledge of the release by Suresh Kumar in favour of the plaintiff.

22. In view of the photocopy of the registered Relinquishment Deed on record, the suit, insofar as qua property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi, is not required to be put to trial.

23. The counsel for the defendant No.2 admits that the defendant No.2 has no share in the said property.

24. Accordingly, a preliminary decree for partition of property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi is passed, declaring the plaintiff and the defendant No.1 to be having 1/2 equal undivided share in the said property.

25. Decree sheet be drawn up.

26. The counsels for the parties state that for the time being, the parties have divided property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi between themselves with a curtain.

27. I have enquired from the counsels, whether the said property is divisible by metes and bounds.

28. The counsels are not aware.

29. The counsel for the defendant No.1 however states that the defendant No.1 is willing to purchase 50% share of the plaintiff in the said property for market price.

30. The counsel for the plaintiff has not taken any instructions on this aspect, though should have taken.

31. In the circumstances, the only final decree for partition which can be passed with respect to property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi is that, if the parties are able to obtain permission from the Municipality for division of the said property in two equal portions by metes and bounds, the property may be divided as such, with the parties retaining the portion of the property which has been in their possession till now; however, if the Municipality does not give permission for such partition, a final decree for partition is passed of property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi, of sale thereof and of distribution of sale proceeds between the parties as per their shares in the said property as declared in the preliminary decree for partition but before selling the property to any outsider, the parties will hold *inter se* bids with the party bidding the highest acquiring the share of the other on payment of the consideration of the share of the other.

32. Accordingly, a final decree for partition of property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi is passed, of partition thereof by metes and bounds in two equal portions by constructing a brick wall if permission thereof is granted by the Municipality and if no such permission is obtained, of sale thereof and of distribution of

sale proceeds between the parties as per their shares in the said property as declared in the preliminary decree for partition but before selling the property to any outsider, the parties will hold *inter se* bidding with the party bidding the highest acquiring the share of other on payment of the consideration of the share of the other.

33. Decree sheet be drawn up.

34. As far as property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi is concerned, it is stated that the property is in the names of defendants No.1&2, with each of the defendants No.1&2 having 1/2 share therein; that the plaintiff claims to have acquired the share of the defendant No.2; that the defendant No.2 has filed the suit aforesaid for setting aside of the said documents.

35. The counsel for the plaintiff agrees that this suit for partition of property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi cannot proceed till the suit filed by the defendant No.2 is decided. He however states that the defendant No.2 could have filed a counter-claim in this suit.

36. No fault can be found with the defendant No.2 not filing a counter-claim and opting to file an independent suit.

37. Once it is found that the suit, insofar as for partition of property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi, cannot proceed till the decision of the question, whether any valid title in the said property has passed on from the defendant No.2 in favour of the plaintiff, no purpose will be served in keeping the suit pending qua the same.

38. Accordingly, the suit insofar as for partition of property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi is disposed of with liberty to the parties to sue for partition thereof, after the decision of the challenge by the defendant No.2 to the documents on the basis of which the plaintiff claims title to the said property, is adjudicated.

39. It is however agreed by all the counsels that till execution is filed with respect to property No.5320, Gali No.67, Haridhian Singh Road, Reghar Pura, Karol Bagh, New Delhi or till any order is passed with respect to property No.C-716, Ganesh Nagar-II, Shakarpur, Laxmi Nagar, Delhi, *status-quo* as recorded above qua possession shall continue.

40. The date of 29th August, 2018 is cancelled.

RAJIV SAHAI ENDLAW, J.

MAY 21, 2018

Bs..

