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

Reserved on : 24th May, 2018

Date of Decision: 1st June, 2018

+ **RFA 172/2017 & CM APPL. 6003/2017**

KAUSHALYA SHARMA Appellant

Through: Mr. Rajeshwar Kumar Gupta,
Advocate (M-9873576770) along
with Appellant in person.

versus

KIRAN DEVI & ORS. Respondents

Through: Mr. P. P Ahuja, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. A suit for partition and permanent injunction was filed by LR's (legal representatives) of Shri Shiv Charan in respect of the suit property measuring 2 bighas 13 biswas which is part of Khasra No.141/27/21 situated in village Vasant Nagar, PO Vasant Vihar, New Delhi (*hereinafter, 'suit property'*).

2. The said suit was originally filed and listed before the original side of the High Court on 5th March, 2003. On 2nd November, 2006, a preliminary decree for partition by metes and bounds was passed in the following terms.

“.....

12. In the aforesaid facts and circumstances which are undisputed, a preliminary decree for partition by metes and bound of the suit land and the constructed property measuring 2 bighas and 13 biswas, which forms part of khasra no. 141/27/1 situate in village Basant, between the plaintiffs and the defendants no.1 to 6 as per their

respective shares is passed. One-half of the suit property shall devolve upon the legal representatives of late Shri Hirday Ram and their descendants in equal shares i.e. defendant no.4, defendant no.5/or her legal representatives and defendant no.6, i.e., one-sixth share each. The remaining half of the property shall vest in equal shares on the surviving legal representatives and descendants of late Shri Hari Singh, namely, the legal representatives of late Shri Shiv Charan and the legal representatives of late Shri Basti Ram. Thus, the share of late Shri Shiv Charan shall be divided in equal shares between his two surviving daughters namely the plaintiff No.1 ($1/12^{\text{th}}$ share) and the plaintiff No.2 ($1/12^{\text{th}}$ share) and the legal representatives of his deceased daughter Smt. Har Nandi viz. defendants No.1 to 3 ($1/12^{\text{th}}$ share together). The share of late Shri Basti Ram shall be divided in equal shares between his two surviving sons namely the plaintiff No.3 ($1/12^{\text{th}}$ share) and the plaintiff No.4 ($1/12^{\text{th}}$ share) and the legal representatives of his deceased son Shri Sant Ram viz. plaintiff No.5 and 6 ($1/12^{\text{th}}$ share together). In case, however, the plaintiff No.5 and/or her legal representative and the plaintiff No.6 relinquish their shares, the same shall devolve upon defendant No.4 in accordance with the relinquishment deeds executed by them.

13. The ADM (Revenue), government of NCT of Delhi is directed to appoint a competent revenue officer to carry out the demarcation for partition of the suit land within six weeks of the receipt of this order. The concerned revenue officer as Local Commissioner in this case shall be paid a fees of Rs. 15,000/- which shall be borne by the parties in the ratio of their respective shares as demarcated above. Report of the Local Commissioner shall be filed as expeditiously as

possible.

List the case for further proceedings on 23rd November, 2006.”

3. Thereafter, on 27th May, 2008 a Local Commissioner was appointed to ascertain the views of the parties as to the most appropriate method of partitioning the property. Various objections were filed to the report of the Local Commissioner. On 9th August, 2012 the Court observed that a valuer ought to be appointed and before appointing a valuer it is necessary to determine what is the constructed and the non-constructed area. The Court, accordingly, directed as under:

“7. Accordingly, let the ADM, Revenue (South-West), Government of NCT, Delhi, i.e. the SDM of the concerned area, appoint a Revenue Official to visit the suit plot and report as to out of the total constructed area of the defendants no. 4 to 6, what is the area which does not fall in the suit plot of 2 bighas and 13 biswas situated on khasra nos. 141/27/1 in Village Basant Nagar, PO-Vasant Vihar, New Delhi and which are those constructed portions of defendants no. 4 to 6 which fall within the aforesaid khasra no.141/27/1.

8. Parties will bear the costs equally of the aforesaid exercise which has to be conducted by the Revenue Officials.

9. Let the ADM, Revenue of the concerned area prepare a report in terms of the present order within a period of 4 weeks of receipt of the copy of the present order.....”

4. On 11th August, 2015 it is noted that the demarcation has been done and despite the same, due to repeated adjournments, the Plaintiffs are being

deprived of their shares in the property as awarded in the preliminary decree passed on 2nd November, 2006. On 31st August, 2015 the learned Single Judge of this Court directed that despite the preliminary decree, wherein Defendant Nos.4 to 6 were held entitled to 50% of the suit property and Plaintiffs along with the Defendant Nos.1 & 3 were held entitled to the remaining 50%, the final partition is yet to take place. The Court also noticed that Defendant Nos.5 and 6 have relinquished their shares in favour of Defendant No.4 and thus, Defendant No.4 would be the owner of 50% of the suit property. Since the final partition was getting delayed, the Court directed that there would be *inter se* bidding among the co-sharers.

5. Suddenly, at that stage, the Appellant herein, Smt. Kaushalya Sharma filed an application being CM No. 18926/2015 under Order 1 Rule 10 CPC. In the said application, it was her case that she acquired knowledge of the pendency of the suit only on 26th August, 2015 and thus, she deserves to be impleaded as a Defendant in the suit. She claimed that she had a share in the property owing to the Will dated 16th December, 2013, which was executed in her favour by her husband Shri Chander Pal Sharma, who in turn was a beneficiary of the Will dated 22nd April, 1993 from his maternal grandfather Shri Shiv Charan. As per the Will, she claimed that House No.60 and 60A, Vasant Village, Vasant Vihar, New Delhi fell in her share.

6. This application came to be dismissed by the Trial Court on 4th October, 2016 against which the present appeal has been preferred.

7. The Appellant's submissions are that Smt. Kaushalya Sharma being the wife of Shri Chander Pal Sharma, who is the son of Smt. Kiran Devi, who in turn is the daughter of Shri Shiv Charan, ought to have been impleaded in the suit. The partition could not have been effected without her

being impleaded and that she was a necessary and proper party. It is further claimed that the property being ancestral property, she has a right in the same. It is further submitted that in various proceedings it has been admitted that her husband Shri Chander Pal was a grandson of Shri Shiv Charan. Thus, she is entitled to her share in the property. She relied on various documents of Shri Chander Pal including the election commission card, electricity bill and death certificate to show that he was living in House No.60 & 60A, Vasant Village.

8. On the other hand it is contended by the learned counsel for the Respondents that the entire case put up by the Appellant is completely fraudulent, inasmuch as both the daughters of Shri Shiv Charan namely Smt. Kiran and Smt. Gyan Devi are alive. The third daughter Smt. Harnandi has passed away but is represented by her three children. The Appellant is actually not the legally wedded wife of Shri Chander Pal as she was only working as a labour in the residence of Shri Chander Pal and there is no evidence of her marriage. The mother of Shri Chander Pal i.e. Smt. Kiran Devi being alive, Smt. Kaushalya Sharma cannot claim rights from Shri Shiv Charan. Moreover, the entire attempt of the Appellant is merely to prevent the final decree from being executed as, despite having knowledge all along of the proceedings pending in the High Court, she chose not to seek impleadment. It is at the final stage when the Local Commissioner had been appointed and *inter se* bidding was also directed that she had chosen to file the present application. In fact on 22nd October, 2016 the final decree had itself been passed by the Trial Court and the decree of partition has also been drawn up. The application is completely *mala-fide*. Smt. Kaushalya Sharma in fact enjoys no rights in the suit property and, in any case, the

genuinity of the two Wills relied upon by her are in grave doubt as both the Wills are unregistered Wills and they have been produced all of a sudden only to delay the partition process which has now attained finality.

9. The Court has considered the rival submissions of the parties. The first and the foremost fact that needs to be noticed is that the Appellant has not come to Court with clean hands. A reply of the RTI query placed on record by the Respondents shows that the Appellant has been visiting the Delhi High Court on several dates since the filing of the suit including 11th March, 2013, 22nd April, 2013, 28th May, 2013, 16th April, 2014, 28th April, 2015, 6th October, 2015, 20th November, 2015 and 19th January, 2016. This confirmation has been issued by the Public Information Officer of the Delhi High Court.

10. The Appellant is, therefore, fully aware of the Court proceedings as on the dates when she has appeared before the Court, several effective orders have been passed, including when amicable settlement was being explored between the parties. Moreover, even when the demarcation proceedings were conducted on 27th November, 2012, her appearance has been marked by the field Kanoongo, who visited the premises. Her signatures also appear in the proceeding sheet conducted on the said date. The fact that the Appellant claims in her Order I Rule 10 application that she acquired knowledge only on 26th August, 2015 is a blatantly incorrect statement. The application is liable to be dismissed on this sole ground.

11. Even on merits, the share of Shri Shiv Charan in the suit property is 25%. His two daughters Smt. Kiran Devi and Smt. Gyan Devi have, along with the LRs of Shri Basti Ram Sharma, who belongs to the other branch of the family, sought partition by means of the present suit. The son of Smt.

Kiran Devi was Shri Chander Pal whose alleged wife the Appellant claims to be. In respect of the Wills put up by her dated 22nd April, 1993 and 16th December, 2013 she has filed a separate probate petition. Her entitlement to a share in the suit property is under severe cloud until and unless the Wills are held to be genuine, enforceable and valid. She has to also prove that she was indeed the legally wedded wife of Shri Chander Pal. The preliminary decree is more than 12 years old and all other co-sharers have been deprived of their shares in the property due to the pendency of the application under Order I Rule 10 CPC, and now the appeal arising therefrom.

12. It is sought to be contended that the suit itself is not maintainable in view of the provisions of the Delhi Land Reforms Act. It is too late in the day to consider such an objection when a final decree has also been passed. It is submitted by the Respondents that the land is not agricultural land. The genuinity of the Will cannot be determined in these proceedings.

13. Moreover, once the decree has been passed, permitting impleadment at this stage would result in *de novo* trial and in matters of this nature there has to be some finality for the long litigation. The claim of the Appellant is also completely barred in the view of her admitted knowledge dating back to 27th November, 2012 and even prior to that when she had been visiting the Delhi High Court attending the proceedings in this suit. It is also the settled position that any person, who seeks impleadment, must have a direct interest in the property, which, in the present case, the Appellant does not have.

14. During the course of arguments, the learned counsels for the Parties have submitted that the Appellant is in possession of several rooms in the suit property from where she is earning rent. Photographs are sought to be placed on record to establish this. On the other hand, learned counsel for the

Appellant submits that since she is in possession, she cannot be dispossessed.

15. This Court, in the present appeal, is only considering the application under Order I Rule 10 CPC and the legality of the order passed by the Trial Court. The reasoning of the Trial Court, that the Appellant does not appear to have a direct interest in the suit property, is correct. The final decree having been passed, the impleadment is not liable to be allowed at this stage, especially as the rights of the Appellant are not crystallised or established.

16. The appeal is, accordingly, dismissed. The dismissal of the appeal would, however, not bar the Appellant from seeking any relief, if she succeeds in the probate petition.

17. Trial court record be sent back. Miscellaneous applications also stand disposed of.

JUNE 01, 2018/dk

**PRATHIBA M. SINGH
JUDGE**