

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

% **Date of decision: 5th April, 2018**

CS(OS) 134/2018

VIPULA CHANDHOK & OTHERS

.... Plaintiffs

Through: Mr. M. Dutta & Mr. Sumehar
Baja, Advs.

Versus

KULBIR SINGH CHANDHOK & OTHERS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.4397/2018 (for exemption)

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

CS(OS) 134/2018 & IA No.4398/2018 (u/O XXXIX R-1&2 CPC)

3. The six plaintiffs viz. i) Vipula Chandhok, ii) Gundeep Singh Chandhok, iii) Paramdeep Singh Chandhok, iv) Tanveerdeep Singh Chandhok, v) Gurcharan Singh Chandhok, and, vi) Ravinder Singh Chandhok, have instituted this suit against the five defendants viz. a) Kulbir Singh Chandhok, b) Amardeep Singh Chandhok, c) Karandeep Singh Chandhok, d) Armaan Singh Chandhok, and, e) Jasmit Singh Chandhok, for the reliefs of declaration of two sale deeds as null, void, *non est* and illegal, one executed by defendant no.2 in favour of defendant no.1 and the other executed by defendant no.3 in favour of defendant no.4 and both with respect to different portions of ground floor of property No.B-39, Greater Kailash Part-I, New Delhi and for cancellation of the said sale deeds.

4. The gravamen of the cause of action of the plaintiffs is that the defendants no.2 and 3 who have executed the sale deeds with respect to identifiable portions of the ground floor of the property, were/are only the owners of undivided share in the entire property along with the plaintiffs and thus could not have executed the sale deeds of identifiable portions of the property.

5. The counsel for the plaintiffs draws my attention to the order dated 25th August, 2015 in FAO(OS) No.402/2015 titled 'Kulbir Singh Chandhok & Anr. Vs. Amardeep Singh Chandhok & Ors' in which the defendants no.1 and 4 herein are said to be the appellants and wherein the defendants have admitted to being the owners of 1/3rd undivided share in the property. It is contended that the defendants no.2 and 3 being the owners of undivided share in the property have wrongly executed the sale deeds of separate / identifiable / distinct portions of the property.

6. I have enquired from the counsel for the plaintiffs, whether the plaintiffs are desirous of partition of the property or do not want the property to be partitioned.

7. The counsel for the plaintiffs states that the plaintiffs are desirous of seeking partition of the property. Subsequently, it is stated that in fact some of the plaintiffs have already applied for impleadment / transposition in CS(OS) No.2672/2013 which has been filed amongst defendants *inter se* for partition of the ground floor of the property amongst themselves. Therefrom it appears that the sale deeds are not of identified or distinct portions but of undivided share.

On enquiry, it is stated that the two sale deeds of the ground floor were with respect to undivided share but in the ground floor but there had been no partition of the entire property comprising, besides of ground floor, also of first and second floors and it has been wrongly stated in the impugned sale deeds that there has been a floorwise partition of the property.

8. I have enquired from the counsel for the plaintiffs that if the plaintiffs also want partition of the property, whether not the proper remedy for the plaintiffs is to sue for partition of the property. It has further been enquired from the counsel for the plaintiffs as to what is the cause of action for the plaintiffs to seek declaration and cancellation of the sale deeds so executed inasmuch as if the plaintiffs in the suit for partition are able to establish that there has been no partition of the entire property and the defendants who have executed the sale deeds were not entitled to execute the sale deeds of the ground floor, the said sale deeds would not affect the right and title of the plaintiffs to have partition.

9. Though in my opinion, owing to the aforesaid, there is no need for the plaintiffs to seek relief of declaration and cancellation qua the sale deeds and the only relief which the plaintiffs can claim is of partition but even if the counsel for the plaintiffs is of the opinion that it is essential for the plaintiffs to seek such declaration and cancellation as is claimed in this suit, the same should be done in a composite suit for partition and for declaration and cancellation. When the plaintiffs themselves are desirous of partition, there is no need for

multiplication of the suits amongst the parties with respect to the same property / right. It is such multiplication which leads to suits remaining pending before the Courts for long and the disputes being never settled.

10. The counsel for the plaintiffs refers to para no.7 of ***Suhrid Singh Alias Sardool Singh Vs. Randhir Singh*** (2010) 12 SCC 112 to contend that it is open to the plaintiffs to seek such declaration and cancellation.

11. Reliance on ***Suhrid Singh Alias Sardool Singh*** supra is misconceived. The said judgment was on an issue of court fees and it is well settled principle that a judgment is a precedent on what is in issue before the Court and not on other matters. The said judgment is nowhere concerned with the right of the co-owner to seek declaration and cancellation of a sale deed executed by another co-owner with respect to identifiable / distinct portion of the property.

12. The suit is therefore not found to be maintainable for the aforesaid reason and is disposed of with liberty to the plaintiffs to, if of the opinion that the sale deeds qua which this suit has been filed affect the rights of the plaintiffs, seek a relief therefor in a suit for partition of the property which the counsel for the plaintiffs states that the plaintiffs will take a call whether to file a fresh suit or to take the chance in the pending suit.

13. However, it is deemed appropriate to refund the court fees paid by the plaintiffs less Rs.15,000/-.

14. Accordingly, a certificate entitling the plaintiffs to refund of the court fees paid less Rs.15,000/- be issued and handed over to the counsel for the plaintiffs.

No costs.

Dasti.

APRIL 05, 2018
'gsr'

RAJIV SAHAI ENDLAW, J.

