

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

% **Date of decision: 5th February, 2018.**

+ **CS(OS) 120/2017 & IAs No.3101/2017 & 3676/2017 (both u/O XXXIX R-1&2 CPC)**

RAJEEV CHHABRA

..... Plaintiff

Through: Mr. Sanjay Sharma, Adv. with
plaintiff-in-person.

Versus

SURINDER KHURANA & ORS

..... Defendants

Through: Mr. Joginder Sukhija and Mr. Amitesh
Giroti, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff Rajeev Chhabra has instituted this suit against the three defendants namely (i) Surinder Khurana; (ii) Anjana Khurana; and, (iii) Arun Khurana, for (a) partition of property No.A-1/261, Paschim Vihar, New Delhi; (b) for possession with respect to 50% share in the ground floor, 50% share in the first floor of the said property; and, (c) for permanent injunction restraining the defendants from dealing with the property.
2. The suit was entertained, though no *ex-parte* relief sought, granted.
3. Pleadings have been completed and the suit is ripe for framing of issues and for consideration of the application for interim relief.
4. A perusal of the plaint shows the case of the plaintiff to be (a) that the defendant No.1 is an old acquaintance of the plaintiff; (b) that the plaintiff was interested in acquisition of a residence for himself and mentioned the said fact to the defendant No.1, who is engaged in real estate business; (c)

that the defendant No.1 proposed to the plaintiff, purchase of property aforesaid jointly by the plaintiff and the defendant No.1; (d) that the said property comprised of ground and first floor only and the defendant No.1 represented to the plaintiff that the parties, after jointly acquiring the property will re-develop the same and equally share the newly built up property; (e) that MoUs dated 5th November, 2014 & 10th November, 2014 were executed in this regard; (f) that sale deeds were got executed as suggested by the defendant no.1; (g) that the plaintiff and the defendants No.2&3 are entitled to have equal share in the property; (h) that the MoUs also provided that if the property is not re-developed, as aforesaid, it will be sold out in 'as it is condition' and the sale consideration amount will be divided between the plaintiff and the defendant No.1 in equal ratio.

5. The counsel for all the three defendants contends (i) that the plaintiff instituted this suit after withdrawing the earlier suit being Suit No.Civ-DJ 611176/16 of the Court of Sh. Mahavir Singhal, Additional District Judge (West), Delhi with liberty to sue for specific performance and in the alternative for partition; (ii) that the plaintiff has however filed this suit only for the relief of partition and not for the relief of specific performance; (iii) that the property aforesaid comprises of ground floor, first floor and open terrace above; (iv) that the ground floor of the property was purchased by defendant No.2 vide sale deed in his name; (v) that the first floor of the property was purchased by defendants No.2&3 vide sale deed in their favour; (vi) that terrace with right of construction thereon till the sky was purchased by the plaintiff vide sale deed in his favour; (vii) that the defendant No.1 is the husband of the defendant No.2 and a cousin of the defendant No.3; (viii) that since there are separate sale deeds in respect of

the plaintiff and defendants No.2&3 with respect to different portions of the property, the suit for partition is misconceived; (ix) reliance is placed on *Tahil Naraindass Vazirani Vs. Ravinder Kaur Sandhu* 2013 SCC OnLine Del 3073.

6. The counsel for the plaintiff though not disputed the factum of separate sale deeds with respect to different portions of the property but has contended that the defendants No.2&3 have filed a suit against the plaintiff in the District Court for declaration of Memorandum of Understanding (MoU) dated 5th November, 2014 and MoU dated 10th November, 2014 as null and void and which has led the plaintiff to institute the present suit.

7. Merely because the defendants No.2&3 may have filed a suit against the plaintiff, even if dishonestly, would not vest a right in the plaintiff to maintain a suit for a relief which has no basis in law. The remedy of the plaintiff is to defend the misconceived suit.

8. Merit is found in the contention of the counsel for the defendants, of the suit in the form in which it has been filed being not maintainable. As long as the sale deeds of different portions of the property exist between the parties, the plaintiff cannot seek the relief of partition, as it cannot be said that there is any common or joint property of the parties which can be partitioned.

9. On the contrary, if the intent of the plaintiff is to enforce the MoUs aforesaid, as it appears to be, the remedy of the plaintiff is to sue therefor i.e. either by enforcing re-development of the property or in the alternative sale of the property with the sale proceeds being shared as provided therein.

10. I may mention that the plaintiff in the present suit has not even sought any relief with respect to the sale deeds, of the same not representing the

correct state of affairs.

11. Thus, the suit is dismissed but with liberty to the plaintiff to sue for appropriate relief.

12. In the facts, no costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 05, 2018

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