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

+ CM(M) 881/2014

SATISH KUMAR & ORS Petitioners

Through: Mr. R.S. Tomar, Advocate

versus

RAVINDER & ORS Respondents

Through: Mr. Shivanshu Kumar, Advocate with
Mr. S.K. Gandhi, Adv. for R-1 to R-3
& R-5 to R-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **19.04.2018**

The petition at hand seeks to assail the order dated 13.08.2014 passed by the learned additional district Judge (ADJ) on the file of the case registered as M-6C/2012 on an application under Order XXVI Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) which was moved by the first, third, fourth and tenth defendants of the civil suit that had been disposed of by judgment/order dated 28.04.2010, it being suit for partition (Suit No.91/2009) which had been instituted on 21.07.2005 by the first respondent. The first, second and fifth petitioners herein were third, fourth and tenth defendants respectively in the said suit, their father Pehlad Singh (since deceased) being the first defendant.

The parties had moved an application under Order XXIII Rule 3 CPC read with Section 151 CPC on 23.03.2010 (Ex.Y) before the trial court which was considered on 28.04.2010. The prayer made in the said

application was for the suit to be decided in terms of settlement deed dated 16.03.2010 (Ex.X). The trial Judge had recorded the statement of the parties and on that basis ordered disposal of the suit “*as settled*”. Pertinent to mention here that in the said plaint, prayer had been made for decree of partition of a number of properties, particulars whereof were mentioned in Annexure ‘A’, the division to be made by metes and bounds, the plaintiff of the case also seeking declaration that he was the owner and possession of 1/24th share in the said estate.

The application under Order XXVI Rule 13 CPC on which the impugned order was passed was moved by first, third, fourth and tenth defendants jointly, the first defendant being actually the predecessor-in-interest of the parties to the suit. The ADJ declined to entertain the said application observing that no preliminary decree had been passed on the basis of settlement and the case had not been decided “*on merits*” and, therefore, there was no occasion for appointment of a local commissioner for partitioning the properties by metes and bounds.

The learned counsel for the petitioner, arguing that the impugned order suffers from error and infirmity, pointed out that the request for appointment of the local commissioner concerns only one of the properties which was part of the estate respecting which the settlement was entered upon, it having been made rule of the court by order dated 28.04.2010, the said property being plot bearing No.C-10, New Nangal Devat Village, Vasant Kunj, New Delhi. Indeed, as per the terms of the settlement indicated in the settlement deed (Ex.X), the said property was accepted to be co-owned by eight of the parties to the suit, they including the petitioners. The

respective shares of the said eight parties were declared. In this view, the order dated 28.04.2010 was in the nature of preliminary decree in the suit for partition respecting Plot bearing No.C-10, New Nangal Devat Village, Vasant Kunj, New Delhi.

It was bounden duty of the court to take the matter further, particularly as the parties to the suit so seek, by exercising its jurisdiction in terms of the provisions contained in Order XXVI Rule 13 read with Order XX Rule 18 CPC.

In above view, the impugned order is found to be suffering from error and, therefore, is set aside. The matter arising out of aforementioned application of the petitioners is revived on the file of the trial court which shall proceed ahead for its appropriate consideration and directions in accordance with law.

The parties are directed to appear before the trial court on 15th May, 2018.

The petition stands disposed of in above terms.

R.K.GAUBA, J.

APRIL 19, 2018

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