

\$~61

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

+ C.R.P. 196/2018 & CM APPL. 37628-37630/2018

OM PARKASH Petitioner

Through: Mr. Anand Parashar & Mr. S.S.
Parashar, Advocates.

versus

RAJ SHOKEEN & ORS

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **14.09.2018**

CM APPL. 37630/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM APPL. 37629/2018 (Condonation of delay)

This is an application seeking condonation of five days delay.

For the reasons explained, the delay is condoned.

The application stands disposed of.

C.R.P. 196/2018

Initial submissions made on behalf of the petitioner. The petitioner assails the impugned order dated 01.05.2018 of the learned ADJ-06, West in CS No.12379/16 vide which an application under Order VII Rule 11 of the CPC filed on behalf of the defendant i.e. the present petitioner herein arrayed as defendant no.1 to the said suit was rejected. The suit that has been filed by the respondent no.1 herein as

the plaintiff to the said suit is one for partition and permanent injunction with it having been asserted vide para 1 of the said plaint which read to the effect:-

“That the defendant No.1 is the father of the Plaintiff and defendant no.2 & 3. That the Plaintiff and Defendants have inherited ancestral property from Late Sh. Desh Ram grand-father of the Plaintiff and defendant No.2 and 3 and father of the defendant no.1 and the copy of Khatauni is Annexure-D.”

The prayers made through the said suit are to the effect:-

“(i) pass a preliminary decree of partition in favour of the plaintiff and against the defendants thereby partitioning the suit properties as shown in Red Colour in the Site plans attached herewith are Annexure-A, B and C situated in the abadi of Colony Saini Vihar, Nangloi, Delhi, Ashok Mohalla, Bhuto Wali Gali, Nangloi, Delhi and Laxmi Park, Nangloi, Delhi and at Chandan Vihar, Nangloi Village, Delhi among the plaintiff and defendants with separate possession;

(ii) appoint a Local Commissioner with the direction to visit the suit properties as shown in Red Colour in the Site plan attached herewith which are Annexure-A, B and C situated in abadi of Colony Saini Vihar, Nangloi, Delhi, Ashok Mohalla, Bhuto Wali Gali, Nangloi, Delhi and Laxmi Park, Nangloi, Delhi and at Chandan Vihar, Nangloi Village, Delhi, ascertain the mode of partition of the suit properties among the plaintiff and defendants and submit his report with the Hon’ble Court;

(iii) pass a final decree of partition thereby actually and physically partitioning the suit properties as shown in Red Colour in the Site plan attached herewith which are Annexure-A, B and C, situated in abadi of Colony Saini

Vihar, Nangloi, Delhi, Ashok Mohalla, Bhuto Wali Gali, Nangloi, Delhi and Laxmi Park, Nangloi, Delhi and at Chandan Vihar, Nangloi Village, Delhi among the plaintiff and defendants by metes and bounds thereby handing over the respective portion of the suit properties to the respective parties;

(iv) pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining the defendant no.1, his attorneys, etc, from selling, transferring, disposing off, parting with possession or creating third party interest in respect of the suit properties as shown in Red Colour in the Site plan attached herewith which are Annexure-A, B and C situated in the abadi of Colony Saini Vihar, Nangloi, Delhi, Ashok Mohalla, Bhuto Wali Gali, Nangloi, Delhi and Laxmi Park, Nangloi, Delhi and at Chandan Vihar, Nangloi Village, Delhi till the partition of the suit properties by metes and bounds among the plaintiff and defendants hereto;

(v) award cost of the present suit in favour of the plaintiff and against the defendants; and

(vi) pass any other or further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case, in favour of the plaintiff and against the defendants."

The petitioner herein submits that inasmuch as the plaintiff i.e. the respondent no.1 herein, who is the son of the present petitioner had averred in Para 3 to the effect:-

"That all the brothers namely Sh. Ved Prakash, Sh. Om Prakash, Sh. Jai Prakash, Sh. Brahm Prakash and Sh. Sat Prakash had partitioned and said property among

themselves which was inherited from Late Sh. Desh Ram.”

i.e., to state that the brothers of the petitioner herein namely Sh. Ved Prakash, Sh. Jai Prakash, Sh. Braham Prakash, Sh. Sat Prakash and the present petitioner herein Sh. Om Prakash had partitioned the suit property among themselves inherited from late Sh. Desh Ram i.e. the grand-father of the plaintiff i.e. the respondent no.1 and grand-father of the defendant nos. 2 & 3 named Anil Shokeen and Manisha arrayed as respondent nos. 2 & 3 to the present petition, having partitioned the property among themselves, the prayer made by the petitioner seeking the grant of partition and permanent injunction was in violation of the provisions of the Hindu Succession Act, 1956 in terms of Section 4 & 8 thereof.

A perusal of the impugned order dated 01.05.2018 categorically brings forth implicitly that the proceedings of the suit were pending previously before this Court apparently before change of pecuniary jurisdiction and after consideration of pleadings vide order dated 22.09.2015 of this Court, five issues had been framed of which issue no.2 specifically dealt with the objections raised in the written statement by the petitioner herein which are the contentions raised through the application under Order VII Rule 11 of the CPC and it has further been observed vide the impugned order to the effect that the plaintiff having pleaded that the father of the defendant no.1, i.e., the present petitioner acquired a co-parcenary property which was the subject matter of the case, and the aspect whether the suit property or

any of those properties was actually co-parcenery in character which would upon the death of a co-parcener devolve upon the legal heirs in terms of Section 6 of the Hindu Succession Act or was self acquired on the death of the deceased, would have to be ascertained with reference to the evidence that may be adduced at trial.

It has also *inter alia* been observed vide the impugned order to the effect that it would be pre-mature for the Court to hold whether the properties were or were not co-parcenry properties or to dismiss the suit on the assumption that the property was self acquired property in which the plaintiff i.e. the respondent no.1 the grand-son of late Sh. Desh Ram could acquire no share by birth. It is apparent that there is no infirmity in the impugned order.

Thus, the present petition and accompanying application are declined.

SEPTEMBER 14, 2018/NC

ANU MALHOTRA, J