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

+ **CS(OS) 462/2016**

SATISH JAIN

..... Plaintiff

Through: Mr. Hemant Chaudhri and Mr. Arjun
Bhaskar, Advs.

Versus

RATAN MALA JAIN & ORS

..... Defendants

Through: Mr. Rajeev Dutta, Sr. Adv. with Mr.
Rahul Shukla and Mr. Kumar
Dushyant Singh, Advs. for D-1.
Mr. Rajesh Banati and Mr. Vikram
Singh, Adv. for D-2&3.
Mr. Tanmaya Mehta, Adv. for review
applicant/appellant Parmod Kumar
Jain.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.04.2018

IA No.4709/2018 (for exemption)

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

**OA No.38/2018 (of Parmod Kumar Jain against the order dated 22nd
March, 2018 of JR)**

3. Parmod Kumar Jain, a non-party to this suit for partition of
immoveable property, by this Chamber Appeal impugns the order dated 22nd
March, 2018 of the Joint Registrar of dismissal of IA No.11377/2017 filed

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by him under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) for impleadment in this suit.

4. The counsel for the applicant/appellant contends (i) that the plaintiff has instituted this suit for partition of property No.14, Alipur Road, Civil Lines, Delhi *inter alia* claiming that the mother of the plaintiff namely Kailashwati Jain was the owner along with defendants No.1 to 3 of the said property and that Kailashwati Jain had gifted her 25% share to the plaintiff; (ii) that the applicant/appellant Parmod Kumar Jain is the brother of the plaintiff and has instituted CS(OS) No.182/2017 disputing the title of the mother as well as the gift claimed by the plaintiff in his favour from the mother; and (iii) that the applicant/appellant needs to become a party to this suit as the plaintiff and the defendants have already obtained preliminary decree for partition and the property may be sold/auctioned in pursuance to the final decree for partition to be passed in this suit, making the claim of the applicant/appellant in CS(OS) No.182/2017 redundant.

5. This is yet another instance of applications for impleadment being filed forgetting the difference between an order/judgment/decree *in personam* and an order/judgment/decree *in rem*. The applicant/appellant being not a party to this suit, will not be bound by order or decree therein. As far as the fear of the applicant/appellant of the property being sold or that the applicant/appellant being dispossessed in pursuance to the final decree for partition in this suit is concerned, it is always open to the applicant/appellant to in his suit i.e. CS(OS) No.182/2017 seek an order in respect thereof and the Court seized of CS(OS) No.182/2017 will consider granting the said order on the application of the principles applicable

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thereto.

6. On the aforesaid facts, pleas and prayer, no error is found in the impugned order of the Joint Registrar refusing impleadment of the applicant/appellant in the present suit.

7. The Chamber Appeal is accordingly dismissed.

Review Petition No.396/2017 & IA No.11026/2017 (for condonation of 93 days in filing the Review Petition)

8. This Review Petition has also been filed by Parmod Kumar Jain aforesaid.

9. The counsel for Parmod Kumar Jain states that besides the aforesaid aspect, certain other aspects were also pleaded in the Review Petition and though withdraws the Review Petition in view of above order but reserving the right to take the same pleas in CS(OS) No.182/2017 or in other appropriate proceedings.

10. The review is dismissed as withdrawn with liberty aforesaid.

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11. On 4th May, 2017, a preliminary decree for partition was passed declaring the plaintiff Satish Jain to be having 25% undivided share, defendant No.1 namely Mrs. Ratan Mala Jain also to be having 25% undivided share and the defendants No.2&3 namely Pradeep Kumar Jain and Sushil Kumar Jain jointly having the remaining 50% share in property No.14, Alipur Road, Civil Lines, Delhi and a Commissioner was appointed for exploring the possibility of division of the property by metes and bounds.

12. Today, the counsel for the plaintiff and the senior counsel for the defendant No.1 state that the property is not divisible by metes and bounds

and a final decree for partition of the property, by sale thereof and distribution of sale proceeds amongst the parties as per the shares declared in the preliminary decree for partition, be passed.

13. The counsel for the defendants No.2&3 contends otherwise and has drawn attention to the site plan of the property filed as Annexure D-1 to the written statement at page 30 of Part I file and states that the property can be divided, with the defendants No.2&3 having 50% share being allotted plot 'A' as shown in the site plan and the plaintiff and the defendant No.1 being allotted their 25% share from the remaining property.

14. A bare perusal of the site plan shows that the proposal of the defendants No.2&3 is heavily loaded in their own favour with the defendants No.2&3 getting the best part of the property and the plaintiff and the defendant No.1 being left with the worst part. Moreover, there is no proposal for division between the plaintiff and the defendant No.1.

15. I have enquired from the counsel for the defendants No.2&3 whether the defendants No.2&3 are willing to take the other 50% portion of the property.

16. The counsel for the defendants No.2&3 conveniently states that he will have to call his clients.

17. It is often found that suits for partition remain pending indefinitely on such pleas being taken by the counsels. The defendants No.2&3 are stated to be in occupation of the best part of the property and their desire to delay is quite evident. Moreover, if the counsel does not have instructions, then the clients must appear along with him and adjournment after adjournment cannot be taken for the said purpose.

18. The counsel for the defendants No.2&3 then states that the plaintiff and the defendant No.1 have also consented before the Commissioner to such division of the property.
19. The counsel for the plaintiff and the senior counsel for the defendant No.1 vehemently oppose.
20. Even otherwise, in law, the subject division of the property is not permitted and the potential of the property cannot be exploited to the hilt by division of the property in such manner.
21. I am therefore satisfied that the division of the property by metes and bounds is not possible.
22. Accordingly, a final decree for partition is passed, of sale of property No.14, Alipur Road, Civil Lines, Delhi and of distribution of sale proceeds thereof amongst the parties as per their shares declared in the preliminary decree for partition dated 4th May, 2017.
23. The counsel for the plaintiff and the senior counsel for the defendant No.1 have refused the option of *inter se* bidding amongst the parties.
24. Decree sheet be drawn up.
25. The date of 23rd April, 2018 is cancelled.

RAJIV SAHAI ENDLAW, J.

APRIL 10, 2018
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