

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

% **Date of decision: 15th March, 2018.**

+ **CS(OS) 454/2017 & IA No. 10977/2017 (u/O XXXIX R 1 & 2 CPC)**

SANJIV BHATIA

..... Plaintiff

Through: Mr. Venancio D'Costa, Mr. Divij Kumar, Ms. Astha Ojha, Ms. Mohana Nijhawan, Advs.

versus

SANJANA BHATIA & ORS

..... Defendants

Through: Mr. Chayan Sarkar, Mr. Kumar Ankur, Mr. Bipul Kedia, Advs. for D-1.

Mr. Ajay Sondhi, Ms. Surbhi Mehta, Advs. for D 2-6 & 9

Mr. Anirudh Bhatia, Ms. Nancy Roy, Advs. for D-8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted the present suit for partition of property No. 17, Abul Fazal Road, Bengali Market, Delhi constructed on land admeasuring 212.5 sq.yds.

2. The suit was entertained and summons thereof ordered to be issued and vide ex parte ad interim order dated 20th September, 2017, the parties directed to maintain status quo as to possession and title of the suit property.

3. Vide order dated 20th December, 2017, finding that the defendants No. 1 and 8, namely, Mrs. Sanjana Bhatia and Mr. Rajiv Bhatia had not filed any written statement within prescribed time from the date of

service, though had entered appearance, the right of the defendants No.1 and 8 to file written statement was closed. Also finding that the defendant No. 7 Mrs. Linda Bhatia though had been served but had not filed written statement within the prescribed time, vide the same order also the right of the defendant No. 7 to file written statement was also closed.

4. The counsel for the defendants No. 2 to 6 and 9, namely, Mr. Navin Bhatia, Dr. Neera Bhatia, Mr. Arun Bhatia, Mr. Rakesh Bhatia, Ms. Shruti Bhatia and Koel Bhatia states that the said defendants have filed written statement supporting the plaintiff.

5. The counsel for the defendant No.8 Rajiv Bhatia states that though his right to file written statement has been closed but he is also supporting the plaintiff.

6. None appears for defendant No. 7 Mrs. Linda Bhatia whose right to file written statement, as aforesaid, stands closed. The defendant No. 7 is proceeded against *ex parte*.

7. Mr. Chayan Sarkar, Advocate appears for defendant No.1 Mrs. Sanjana Bhatia and states that he has been engaged yesterday only and has filed an application in this Court today morning for recall of the order dated 20th December, 2017 closing the right of the defendant No.1 to file a written statement. He states that the hearing be adjourned and states that time be granted to file written statement.

8. The counsel for the plaintiff states that in the facts aforesaid, there is no impediment to passing of a preliminary decree for partition. It is stated:-

(i) that the property was owned by Jagan Nath Bhatia, who

died on 27th December, 1976 leaving a widow, a son namely Harbans Lal Bhatia and five daughters, namely, Swaran Bhatia, Pushpa Bhatia, Prem Bhatia, Renu Bhatia and Koel Bhatia and widow and children namely defendants no.2 Mr. Navin Bhatia and defendant no.3 Dr. Neera Bhatia of a predeceased son namely, Om Bhatia and the widow of Om Bhatia has also died leaving defendants no.2&3 only as her heirs;

- (ii) that the wife of Jagan Nath Bhatia, namely, Durga Devi Bhatia also died in February, 1988;
- (iii) that neither Shri Jagan Nath Bhatia nor Durga Devi Bhatia left any Will; and,
- (iv) that the parties to the suit are the heirs of the two sons and four daughters of Shri Jagan Nath Bhatia save for defendant No. 9 Koel Bhatia, daughter of Shri Jagan Nath Bhatia.

9. Though neither the plaintiff nor any of the defendants have filed any document of title of the said property but the counsel appearing for the defendant No. 1, on enquiry as to what is the defence of the defendant No.1 to the suit, though earlier had stated that he has to still find that out, now while this order is being dictated states that 'there is a Will' but he does not know of whom.

10. It is quite evident that the ownership of Jagan Nath Bhatia is not in dispute.

11. The counsel for the defendant No.1, on enquiry as to in whose name the property is standing today, states that the property is standing in the name of Jagan Nath Bhatia today also.

12. As far as the request of the defendant No.1 for adjournment of today's proceedings is concerned, I may notice that the order dated 24th October, 2017 records the presence of Mr. Atul Sharma and order dated 20th December, 2017 records the presence of Mr. Abhishek Rana, Advocate for defendant No.1. Vakalatnama dated 23rd October, 2017 of Mr. Atul Sharma, Mr. Mahesh Kumar Sharma and Mr. Gagan Kumar Singhal, Advocates on behalf of defendant no.1 is on record. It is thus not as if defendant No.1 was not aware of the order dated 20th December, 2017. If the defendant No. 1 was aggrieved therefrom, a Chamber Appeal could have been preferred and the application stated to have been filed today, stated to be for recall of the order dated 20th December, 2017 and which owing to the remedy of Chamber Appeal being available and the time for filing the appeal having expired, is in any case, not maintainable. Even otherwise, the counsel for the defendant No.1 seems to be proceeding on the premise that the time for filing the written statement is 90 days when the time prescribed by CPC is 30 days only and there is no automatic extension for 90 days (See order dated 12th February, 2018 in CS(Comm) No.861/2017 titled ***Granada Services Private Limited Vs. Ankit Raj***). In fact, the counsel now states that he does not dispute the said time limit.

13. Once it is so, in the absence of anything before the Court, the Court is not to keep suits pending by allowing litigants to indulge in practice of putting forward a new face before the Court on every date and thereby get adjournments.

14. It is quite obvious that the defendant No. 1, who claims to be in possession of the property, is indulging in dilatory tactics to perpetuate

her possession of the property.

15. In view of the aforesaid, there is no impediment to a preliminary decree for partition being passed.

16. The parties being Hindus, the devolution of the property would be governed by the Hindu Succession Act, 1956.

17. Accordingly, a preliminary decree for partition of property No. 17, Abul Fazal Road, Bengali Market, Delhi is passed, declaring the parties to be having the following shares therein:

S. No	Party	Share
1.	Plaintiff – Mr. Sanjiv Bhatia	1/12 th
2.	Defendant No.1 – Ms. Sanjana Bhatia	1/6 th
3.	Defendant No.2 – Mr. Navin Bhatia	1/12 th
4.	Defendant No.3 – Ms. Neera Bhatia	1/12 th
5.	Defendant No.4 – Mr. Arun Bhatia	1/12 th
6.	Defendant No.5 – Mr. Rakesh Bhatia	1/24 th
7.	Defendant No.6 – Ms. Shruti Bhatia	1/24 th
8.	Defendant No.7 – Ms. Linda Bhatia	1/6 th
9.	Defendant No.8 – Mr. Rajiv Bhatia	1/12 th
10.	Defendant No.9 – Ms. Koel Bhatia	1/6 th

18. Finding the number of owners of the property to be large and further finding the size of the property to be 212.5 sq.yds. only and informed to comprise of ground floor and first floor only, it is quite obvious that the same is not capable of division by metes and bounds. No need to waste time in the said exercise is thus felt.

19. Accordingly, a final decree for partition of property No. 17, Abul

Fazal Road, Bengali Market, Delhi is also passed, of sale of the property and distribution of sale proceeds thereof in accordance with the shares declared in the preliminary decree for partition.

20. The parties are left to bear their own costs.
21. Decree sheet be prepared.
22. The next date fixed of 19th March, 2018 is cancelled.

MARCH 15, 2018
SRwt

RAJIV SAHAI ENDLAW, J

