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

+ **CS(OS) 19/2018 & IA No.816/2017 (u/O XXXIX R-1&2 CPC)**

GAURAV CHHABRA

..... Plaintiff

Through: Mr. Jitender Vashisht, Adv. with
plaintiff in person.

Versus

ATAM PERKASH TUTEJA

..... Defendant

Through: Mr. Deepender Hooda and Ms. Jyoti,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.01.2019

1. The suit is ripe for framing of issues.
2. The counsel for the plaintiff as well as the counsel for the defendant have handed over proposed issues which are taken on record and the counsels have also been heard.
3. The plaintiff has sued for partition of property No.8281 to 8283, 8240 consisting of ground, first, second, third, fourth and fifth floors with terrace/roof built on plot No.7, on land admeasuring 118.8 sq. mtrs. situated at Multani Dhanda, Paharganj, Delhi.
4. The counsel for the plaintiff states (i) that the defendant was the owner of the entire property; (ii) that the defendant, vide registered Sale Deed sold 1/6th undivided share in the said property to one Sunil Bhatia; (iii) that Sunil Bhatia died on 3rd June, 2015; (iv) that the remaining legal heirs of

Sunil Bhatia relinquished their respective shares in the aforesaid 1/6th undivided share in the said property in favour of another heir namely Mukul Bhatia; and, (v) that the said Mukul Bhatia has vide registered Sale Deed sold the said 1/6th share in the property to the plaintiff.

5. The counsel for the defendant, though admits the sale of 1/6th share to Sunil Bhatia but states that the defendant does not know whether the plaintiff is the present owner. On enquiry, whether the defendant has made any enquiry from the heirs of Sunil Bhatia or from Mukul Bhatia, the answer is in the negative.

6. On further enquiry, whether not the plaintiff has produced before this Court the registered Relinquishment Deed executed by other heirs of Sunil Bhatia in favour of Mukul Bhatia and Sale Deed executed by Mukul Bhatia in favour of the plaintiff, the counsel for the plaintiff states that the photocopies of the same have been supplied to the defendant. On further enquiry, whether any person other than the plaintiff has approached the defendant with respect to the said 1/6th share, admittedly sold by the defendant to Sunil Bhatia, the counsel for the defendant states that though it is not pleaded here but the defendant has filed a suit for permanent injunction against two or three people who are claiming ownership of the property adversely to the defendant but not Sunil Bhatia.

7. Not only is the plea not taken in the written statement not to be considered but even if were to be considered, does not come in the way of the claim of the plaintiff.

8. The counsel for the defendant has also argued, that the plaintiff straightway filed this suit, without showing the Relinquishment Deed and/or the Sale Deed by Mukul Bhatia in favour of the plaintiff to the defendant and the defendant disputes the said documents.

9. In the facts aforesaid, the dispute by the defendant of the documents aforesaid is found to be without any basis in law, and not substantial, to merit framing of any issue thereon.

10. The plaintiff, besides the relief of partition, has sought recovery of Rs.6,05,000/- towards “arrears of leave and licence fee” and for *mesne* profits.

11. The counsel for the plaintiff states that the arrears of leave and licence fee is in the nature of arrears of *mesne* profits only.

12. The plaintiff however demanded partition for the first time only on 11th December, 2017 and this suit was instituted on 5th January, 2018 and without the plaintiff having demanded partition and partition having been denied, the plaintiff cannot be permitted to claim arrears of *mesne* profits by titling the same as ‘leave and licence fee’. Possession of one co-owner is for self and other co-owners and without demanding possession and being denied possession or partition, no claim for *mesne* profits lies. The claim of the plaintiff for leave and licence fee is thus found to be not tenable in law, to merit any issue thereon.

13. As far as the claim for future *mesne* profits is concerned, though a preliminary decree for partition is being passed today itself but the question of *mesne* profits shall be gone into at the stage of passing final decree for partition.

14. The pleas of the defendant having not merited framing of any issue, the plaintiff is entitled to a preliminary decree for partition forthwith.

15. A preliminary decree for partition is passed, declaring the plaintiff to be the owner of 1/6th undivided share in the property aforesaid and declaring the defendant to be the owner of the remaining 5/6th undivided share in the said property.

16. The counsel for the plaintiff states that the defendant has already in the written statement pleaded that the property is indivisible by metes and bounds.

17. The counsel for the defendant today also reiterates the same.

18. The counsel for the plaintiff states that the plaintiff also does not claim the property to be divisible by metes and bounds.

19. That being the admitted position, there is no option but to pass a final decree for partition also of the property, of sale thereof and of distribution of sale proceeds thereof between the parties as per their shares declared in the preliminary decree for partition.

20. The suit having been disposed of today, it is not deemed appropriate to, for the purpose of determining the *mesne* profits for the past about one year, issue a commission for determining the *mesne* profits, inasmuch as the costs of the commission would be high in comparison to the *mesne* profits.

21. A final decree for partition of property No.8281 to 8283, 8240 consisting of ground, first, second, third, fourth and fifth floors with terrace/roof built on plot No.7, on land admeasuring 118.8 sq. mtrs. situated at Multani Dhanda, Paharganj, Delhi is passed, of sale thereof and

distribution of sale proceeds as per the shares declared in the preliminary decree for partition.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 15, 2019

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