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

+ **RFA(OS) 66/2019 and C.M. Appl. Nos. 31499/2019 (for stay),
31501/2019 (for directions) & 31502/2019 (for condonation of
delay of 5 days in filing the appeal)**

GAJINDER SINGH KHURANA

..... Appellant

Through: Mr. Mayank Wadhwa, Ms. Shrestha
Jain and Mr. Ranvneet Singh,
Advocates.

versus

KULDEEP KAUR & ORS

..... Respondents

Through: Mr. Udaibir Singh Kochar, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **09.12.2019**

1. The appellant/defendant in CS(OS) No. 397/2019 is aggrieved by the order dated 26.04.2019, passed by the learned Single Judge, whereunder a preliminary decree of partition has been passed in respect of an immovable residential premises situated on Plots No. 2, 63 & 64, F-Block Arya Samaj Road, Uttam Nagar, New Delhi—110059.
2. The undisputed facts of the case are that Sh. Harbans Singh, grandfather of respondent nos. 1 to 3 and father of the appellant/defendant, had purchased the suit property on 25.03.1966. Sh. Harbans Singh died intestate on 08.06.1971. On his demise, he was survived by his widow, Smt. Inderjit Kaur, his two daughters (Smt. Kulwant Kaur and Smt. Manjit Kaur) and

two sons [Sh. Gajinder Singh Khurana (appellant) and Sh. Balwant Singh Khurana (predecessor in interest of the respondents)]. By virtue of the registered Relinquishment Deed dated 17.10.1977, the widow and two daughters of Sh. Harbans Singh had relinquished their shares in the suit property in favour of the appellant/defendant and his brother, Late Balwant Singh Khurana, Sh. Balwant Singh Khurana died intestate on 10.06.2015. The wife of Sh. Balwant Singh Khurana had predeceased him. The respondent nos. 1 to 3 being the legal heirs of Sh. Balwant Singh Khurana, instituted the subject suit claiming one half share in the suit premises and partition thereof by metes and bounds.

3. After being served with the summons in the suit, the appellant/defendant filed a written statement, wherein, one of the preliminary objections taken was that the suit instituted by the plaintiff/respondent had not been properly valued for the purposes of court-fee and jurisdiction. It has been averred in para 3 of the written statement that the value of the suit premises is less than Rs.2 crores, as per the Circle Rate of the area in question. On merits, it was averred in the written statement that the appellant/defendant is entitled to purchase the suit property because *“he has paid the entire money for the said suit property for his family at the time when his marriage was solemnized in 1966 but the same was purchased in the name of the defendant’s father”*.
4. The plea with regard to lack of pecuniary jurisdiction to adjudicate the suit was rejected by the learned Single Judge in the following words:-

“4. Learned counsel for the defendant has raised only one objection, namely, that this court does not have a pecuniary

jurisdiction to adjudicate the matter. He states that in the plaint, the plaintiff has wrongly valued the property which is the subject matter of the suit at Rs.2.10 crores whereas the actual value of the suit property according to the defendant is Rs.1.87 crore as per the valuation report which he has relied upon.

5. It is clear that what the defendant is doing is valuing the property based on a notification issued by the Government of NCT of Delhi regarding the Circle Rate. It is a settled position that circle rates do not necessarily reflect the market value of the property. The property is 300 sq. yards property in a prime area of Uttam Nagar near Janak Puri. There are no reasons to believe that the property has been undervalued in the plaint.”

5. We see no reason to differ with the view expressed by the learned Single Judge above. The suit property measures 300 sq. yards and is situated in West Delhi at Uttam Nagar, near Janak Puri, which is a very densely populated locality. That a particular circle rate of the area has been fixed by Government of National Capital Territory of Delhi does not mean that the actual market value of the suit property cannot be higher. Circle rate defines the minimum value at which the sale or transfer of an immovable property is permissible. In any case, this is not a case of undervaluation. The appellant/defendant is pleading over valuation. The plea of lack of pecuniary jurisdiction has been rightly rejected by the learned Single Judge.

6. As for the other plea taken by the appellant/defendant, there is no denial to the fact that the subject premises was owned by late Sh. Harbans Singh who died intestate and left behind his widow, two sons and two daughters. Upon execution of the Relinquishment Deed by his widow and his two sisters, the remaining two legal heirs, namely the appellant/defendant and the father of the respondents/plaintiff i.e. Sh. Balwant Singh Khurana became the joint owners of the suit property.
7. For learned counsel for the appellant to contend that the appellant/defendant had raised the built up structure existing on the subject premises from his own funds and he would therefore be entitled to the entire premises, is not only untenable, it is also fallacious. In fact, the stand taken by the appellant/defendant in para 3 of the written statement filed on the merits, is to the effect that he had spent money for construction of the house along with his father. The appellant has apparently tried to improve upon his case in the present appeal by taking a plea in Ground ('h') to the effect that respondents do not have any right in the property as the said property was purchased by his funds which was not even his case before the learned Single Judge. In any event, the appellant/defendant cannot be permitted to take any such defence in view of the clear bar placed under Section 4 of the Prohibition of Benami Property Transactions Act, 1989.
8. In view of the fact that the appellant/defendant has failed to establish any defence in his written statement to dislodge the plea of the respondents/plaintiff that Sh. Harbans Singh was the sole owner of the suit premises and the sale deed stands in his name and on his demise, upon his

widow and two daughters relinquishing their respective shares in the suit premises, the same fell equally to the share of the appellant/defendant and his deceased brother, we find no reason to interfere with the impugned order whereunder a preliminary decree of partition has been passed by declaring the appellant/defendant to be entitled to 50% share and the respondent nos. 1 to 3 as collectively entitled to the remaining 50% share in the suit premises.

9. As a result, the impugned preliminary decree is upheld. The present appeal is dismissed along with pending applications.

HIMA KOHLI, J

ASHA MENON, J

DECEMBER 09, 2019

AK/MK