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

+ **FAO(OS) 171/2019**

SHOBHA AGGARWAL & ORS

..... Appellants

Through: Mr.P.K.Agrawal with Ms.Tannya
Sharma, Ms.Deepti Gupta and
Ms.Shusitsma Hazarika, Advocates.

versus

KRISHAN KUMAR & ANR

..... Respondents

Through: Mr.P.K.Rawal with Mr.Tarun
Agarwal, Advocates for R1.
Mr.Kunal Aganpal with Mr.Harshit
Jain, Advocates for R2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE A.K.CHAWLA

ORDER

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06.09.2019

CAV. 892/2019

1. Since the learned counsel for the Respondents have put in appearance, the caveat is discharged.

CM APPL. 40135/2019 (exemption)

2. Allowed, subject to all just exceptions.

FAO(OS) 171/2019 and CM APPL. 40134/2019 (stay)

3. Notice. Notice is accepted by learned counsel for the parties respectively.

4. The three Plaintiffs in CS(OS) 347 of 2018 which is a partition suit filed by them against the Respondents/Defendants 1 and 2 have filed this appeal

against an interim order dated 16th July 2019 passed by the learned Single Judge in IA Nos.9353 of 2018 and 10498 of 2018.

5. Appellant Nos. 1 and 2 are the sisters of Respondent Nos.1 and 2 and Appellant No.3 is the son of one of the deceased sisters. Although there are several properties of their father which form the subject matter of the partition suit, the interim order pertains to the property at Sunder Nagar where Respondent No.1 was residing.

6. It is obvious that on this interim stage the respective shares of the parties had not yet been determined. Noting the respective contentions of the parties in that regard the learned Single Judge has in the impugned order in para 24 observed as under:

“24. It is the submission of the Defendants that, at best, the Plaintiffs would be entitled to 1/15th and as per the Plaintiffs, they would be entitled to 1/5th share. The Defendants, as per the submissions of Ld. Counsels appearing for them, wish to monetize the suit property and enjoy the sale proceeds inasmuch as the Defendants do not continue to wish to reside in the suit property any longer. Accordingly, the Defendants are permitted to explore a buyer for the suit property and if an appropriate buyer is found, the Defendants are permitted to approach the Court by means of an application by placing the draft agreement to sell on record. At that stage, the Court would consider as to what amounts should be deposited in this Court in order to secure the interests of the Plaintiffs who are also senior citizens and if any other terms are to be imposed, before permitting sale of the property. The interim order is modified to this extent alone in respect of the Sunder Nagar property. Since the Chandigarh and Mohan Nagar property are already sold, the interim order is vacated qua these properties.”

7. There are three grievances put forth by learned counsel for the Appellants. First, he states that it was mandatory for the learned Single Judge to first determine the respective shares of the parties in the properties in question before proceeding to direct sale of any one of the parties. Secondly, he states that the mandatory provision of Section 6(1) of the Partition Act was not complied with and in this regard places reliance on the decision in ***Rani Aloka Dudhoria v. Goutam Dudhoria and Ors. (2009) 13 SCC 569.*** Thirdly, he takes exception to the Defendants alone being permitted to locate a buyer for the suit property.

8. The Court would like to observe that what the learned Single Judge has done is only to note the contentions of the parties as regards their respective shares. The observations are obviously not conclusive. Secondly, the Court finds that what weighed with the learned Single Judge was the advanced age of all the parties. The present Appellant Nos.1 and 2 are well about 60 years of age and Respondent Nos.1 and 2 are 81 and 70 years respectively. It was accordingly considered appropriate that if the Sunder Nagar property is sold, a substantial sum could be recovered which would then help the parties in their advanced age. The Court prima facie does not find it to be an unreasonable approach.

9. As regards the apprehension that the sale may take place *de hors* the Partition Act, in view of the observations of the Supreme Court in ***Rani Aloka Dudhoria*** (supra) the Court permits the present Appellants to file an appropriate application before the learned Single Judge drawing attention to Section 6(1) of the Partition Act and asking that a Court Commissioner be

appointed to first fix a reserve price before proceeding to accept bids for the property in question. It is clarified that although the learned Single Judge has in the impugned order permitted the Defendants to locate a buyer, it will equally be open to the Plaintiffs/Appellants herein to locate an appropriate buyer and produce such buyer before the Court Commissioner. It will be open to the learned Single Judge, in the application to be filed by the Appellants to fix other terms for the Court Commissioner to adhere to in the matter of fixing of the reserve price, publication of the notice and acceptance of the bids which will then be placed before the Court for its further orders.

10. It is further directed that the money obtained on the sale of the property would be deposited in the Court and would be subject to further orders of the learned Single Judge. The learned Single Judge will further pass orders on the amount that should be disbursed to the parties pending the final disposal of the suit. With the above directions the appeal is disposed of. Pending application also stands disposed of.

S. MURALIDHAR, J.

A.K.CHAWLA, J.

SEPTEMBER 06, 2019

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