

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

% **Date of decision: 8<sup>th</sup> January, 2019**

+ **CS(OS) No.94/2016, IA No.2718/2016 (under Order XXXIX Rules 1&2 CPC)**

**SMT. ANUSHA TEWANI** **.... Plaintiff**

Through: Mr. B. Karunakaran, Adv.

Versus

**SMT. LAKSHMI TEWANI & ORS.** **...Defendants**

Through: Mr. Y.R. Sharma, Adv. for D-1 to 3.

Mr. Palak Mishra & Ms. Suhani

Mathur, Advs. for D-4 to 6.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. None appears for the plaintiff.
2. Counsel for the defendant nos.1 to 3 states that mediation, to which the parties were referred, has failed.
3. The suit, on 9<sup>th</sup> October, 2018 when the parties were referred to Mediation, was ripe for framing of issues.
4. Neither the counsel for the defendant nos.1 to 3 nor the counsel for the defendant nos.4 to 6, though appear, are of any assistance.
5. A perusal of the pleadings shows that the suit has been filed for partition and ancillary reliefs with respect to the following:
  - (i) Property No.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi.
  - (ii) Flat No.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi.

6. The plaintiff claims both the aforesaid properties to be belonging to the husband of defendant no.1 who was the father of the plaintiff, defendant nos.2 and 3, and the predecessor of defendant nos.4 to 6.

7. The defendant nos.1 to 3, in their written statement have pleaded that the defendant no.1 is the owner of property no.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi vide conveyance deed dated 10<sup>th</sup> July, 1995 in her favour i.e. of a date prior to the demise of her husband on 20<sup>th</sup> May, 1996.

8. The defendant nos.4 to 6 have not contested the claim of the plaintiff in the suit.

9. The counsel for the defendant nos.1 to 3 states that the said defendants have no objection to a preliminary decree for partition being passed with respect to Flat No.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi, with the plaintiff and the defendant nos.1 to 3 having one-fifth share each therein and the defendant no.4 to 6 together having the remaining one-fifth share therein. He further states that neither the plaintiff nor the defendant nos.4 to 6 have produced any documents to show that the father of the plaintiff and the defendant nos.2 and 3 and who was the husband of the defendant no.1 was at any time the owner of property no.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi.

10. At this stage, one lady is found standing next to the counsel for the defendant nos.1 to 3 and on enquiry it is informed that she is the plaintiff. She states that her Advocate has not come today.

11. The plaintiff, on enquiry as to on what basis she states that property no.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi belonged to her father, replies in English that she claims so because the mother i.e. the

defendant no.1 was not working and “we all had contributed to the said property.

12. It prima facie appears that the plaintiff cannot be permitted to keep the property no.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi embroiled in litigation in this suit for partition without the plaintiff having any semblance of evidence to support that the same belonged to the predecessor of the parties. The plaintiff is cautioned that if at all she would be permitted to lead evidence on the said aspect, it could be subject to actual costs of suit being imposed on her if the plaintiff ultimately fails in proving the property to be of the common predecessor.

13. The plaintiff, on enquiry states that she was working in the Railways and has retired last year.

14. Last opportunity is given to the plaintiff to bring her Advocate on 7<sup>th</sup> February, 2019, else the suit will be proceeded with without waiting for the Advocate for the plaintiff.

15. The plaintiff has handed over in the Court proposed issues which are taken on record.

16. At this stage, Mr. B. Karunakaran, Advocate for the plaintiff has appeared and on enquiry as to on what basis he claims that the common predecessor of the parties was the owner of property no.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi, states that “in view of the settled law he cannot state anything but at the same time his concession should be recorded”.

17. It is quite obvious that the suit for partition, insofar as the property no.M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi is concerned, has no legs to stand. The plaintiff, in the plaint also, save for a bare

averment has not pleaded any particulars of the title if any of the common predecessor of the parties to property no. M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi. On the contrary, the defendants no.1 to 3 have produced before this Court certified copy of conveyance deed dated 10<sup>th</sup> July, 1995 executed by President of India of freehold rights in land underneath the said property in favour of defendant no.1 i.e. during the lifetime of the common predecessor of the parties, for partition of whose estate this suit is filed. The same amply demonstrates that the said common predecessor was not the owner of the said property and the same does not form part of his estate. The plaintiff, in the plaint, has not challenged the said conveyance deed or claimed any relief with respect thereto. In the replication filed by plaintiff to written statement of defendants no.1 to 3 also, the plaintiff has merely pleaded that the said property was purchased from the income of plaintiff and which plea does not make the property the property of the common predecessor, to be partitioned as part of his estate.

18. In the aforesaid state of affairs, there is no need to put the claim of the plaintiff for partition of flat no. M-106, Guru Harkishan Nagar, Paschim Vihar, New Delhi to trial and the plaint, insofar as for partition of the said property, is rejected and / or the suit, insofar as for partition of said property, is dismissed.

19. The counsel for the defendant nos.1 to 3, who are the only contesting defendants, has already agreed to preliminary decree for partition with respect to flat no. 44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi and not disputed the shares therein as claimed by the plaintiff.

20. Resultantly, a preliminary decree for partition of flat no.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi is passed, declaring the

plaintiff Smt. Anusha Tewani, defendant no.1 Smt. Lakshmi Tewani, defendant no.2 Dr. Devendra Tewani and defendant no.3 Smt. Shaila Ochani having one-fifth undivided share therein and the defendant nos.4 to 6, Smt. Sheetal Tewani, Ankush Tewani and Pankaj Tewani together having the remaining one-fifth undivided share therein.

21. Preliminary decree for partition be drawn up.

22. The plaintiff, in the suit, besides the relief of partition, has also claimed a direction to the defendants to render true accounts of the profits / damages for three years prior to the institution of the suit with respect to the said property. On enquiry, it is stated that the defendant nos.4 to 6 are in occupation of flat no.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi.

23. Considering, (i) that defendant nos.4 to 6 are the widow and children of the pre-deceased son of common predecessor K.C. Tewani and are residing therein; (ii) that the suit was instituted only on 9<sup>th</sup> February, 2016; and, (iii) that the defendant nos.4 to 6, who alone can be held liable for mesne profits with respect to the said flat no.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi, have not contested the claim of the plaintiff for partition of the said flat and which has resulted in the preliminary decree for partition being passed forthwith, the plaintiff is not found entitled to relief of accounts or mesne profits with respect to the said property.

24. The undisputed position is that the flat aforesaid admeasures 1150 sq.ft. and comprises of three bed-rooms besides living room etc. It is quite evident that the same is incapable of division by metes and bounds.

25. Resultantly, there is no option but to also pass a final decree for partition of flat no.44, Parmarth Apartments, D-Block, Vikas Puri, New

Delhi, of sale thereof and of distribution of sale proceeds in accordance with the shares declared of the parties in the preliminary decree for partition and with further provision that prior to sale of flat no.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi to an outsider, the parties shall be entitled to inter se bid to purchase the share of other and with the party making the highest bid being entitled to purchase the share of the other and the purchaser being entitled to vacant, peaceful and physical possession of the said flat against payment of sale consideration of the shares of the others and execution of transfer documents in favour of the purchaser; if the person in possession / occupation of the said flat fails to vacate the same, he/she/they shall be liable to be dispossessed therefrom as if in pursuance to decree of possession.

26. No costs.

27. Final decree of partition of flat no.44, Parmarth Apartments, D-Block, Vikas Puri, New Delhi be also drawn up with the certificate / stamp duty thereon being shared by the parties in accordance with the shares therein.

**JANUARY 08, 2019**  
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**RAJIV SAHAI ENDLAW, J.**