

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

% **Date of decision: 28th January, 2019**

+ **CS(OS) 172/2018, IA No.15807/2018 (u/O XII R-6 CPC) & IA No.5249/2018 (u/O XXXIX R-1&2 CPC).**

EKANT BARUTA @ VIKAS BARUTA Plaintiff

Through: Mr. Rahul Bhardwaj, Adv.

versus

RAKESH BARUTA & ORS. Defendants

Through: Mr. Kunal Madan, Mr. Manu Bakshi,
Mr. Shyam Basu, Advs. for D-1.

Mr. Kewin Kunjappy, Adv. for D-3
& 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for partition of property no.S-3B, Janta Market, Rajouri Garden, New Delhi – 110 027 claiming the plaintiff and the four defendants to be having 1/5th undivided share therein under the deed of purchase of the subject property in favour of the plaintiff and the four defendants.

2. The suit was entertained and summons thereof ordered to be issued and pleadings have been completed.

3. None has been appearing for the defendant no.2. The order dated 24th July, 2018 records that all the four defendants had been served on 19th May, 2018. No written statement has been filed on behalf of the defendant no.2. The defendant no.2 is proceeded against *ex parte*.

4. The plaintiff has filed IA No.15807/2018 under Order XII rule 6 of the Code of Civil Procedure, 1908 (CPC) for decree on admissions.

5. The counsel for the defendants no.3&4 states that the said defendants

are supporting the plaintiff.

6. The counsel for the defendant no.1, who on the last date of hearing i.e. 29th November, 2018 had not appeared and had sent a proxy counsel to take adjournment, states that since the parties are family members, the suit be referred to mediation for exploring possibility of settlement.

7. The counsel for the plaintiff states that though the parties are family members but on account of threats meted out by the defendant no.1, recently an FIR has been registered against the defendant no.1 on 6th July, 2018.

8. The counsel for the defendant no.1 though admits registration of the FIR, states that it is false.

9. The counsel for the plaintiff and the counsel for the defendants no.3&4 state that in the circumstances there is no possibility of amicable settlement and the purport of the defendant no.1 is only to delay.

10. The counsels have been heard.

11. The counsel for the defendant no.1, in opposition to the application under Order XII Rule 6 of the CPC states that though the sale deed by which the property was purchased is in the joint names of the plaintiff and the four defendants but it is the plea of the defendant no.1 in para 9 of the preliminary objections in his written statement that the entire sale consideration of Rs.3,50,000/- for purchase of the property was paid equally by the defendant no.1 and by his brother Anil Baruta though the sale deed was executed and registered in the name of the plaintiff and the four defendants. Attention is also drawn to para 10 of the preliminary

objections in the written statement of the defendant no.1 where it is pleaded that the plaintiff, on the date of sale deed i.e. 12th May, 1988, was only 2½ years of age and had made no monetary contribution towards the purchase. It is argued that the defendant no.1 and the said Anil Baruta, who is not a party to the suit, in the circumstances are the exclusive owners in the property and the plaintiff and the defendants no.2 to 4 have no share in the property.

12. The pleas aforesaid of the defendant no.1 are not sustainable in law and are barred by the *Benami* Transactions (Prohibition) Act, 1988 since renamed Prohibition of *Benami* Property Transactions Act, 1988. The plea, of the sale consideration having been contributed by the defendant no.1 and Anil Baruta, does not in law constitute the defendant no.1 and Anil Baruta as owners of the property and the property in law is of the persons in whose name title with respect thereto has been recorded i.e. the plaintiff and defendants no.1 to 4. Section 2 (9) of the amended Act defines a transaction or an arrangement where a property is transferred to or is held by, a person, and the consideration for such property has been provided, or paid by, another person, as a '*benami*' transaction. Section 4 provides that no defence based on any right in respect of any property held *benami*, whether against the person in whose name property is held, or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. The defence of the defendant no.1 is thus not allowed under the said law.

13. I have perused the written statement of the defendant no.1 and do not find the defendant no.1 to have pleaded any exception to the *Benami* law

vis-à-vis the subject property.

14. Once it is found to be so, the plaintiff is entitled to a decree forthwith, not only under Order XII Rule 6 of the CPC but also under Rule XV Rule 1 of the CPC. The pleas in the written statement of the defendant no.1, being the only contesting defendant, do not raise any substantial question of law or fact for an issue to arise or framed.

15. The plaintiff is thus entitled to a decree forthwith.

16. A preliminary decree for partition of property no.S-3B, Janta Market, Rajouri Garden, New Delhi – 110 027 is passed, declaring the plaintiff Ekant Baruta @ Vikas Baruta and the four defendant namely (i) Rakesh Baruta; (ii) Sunil Baruta; (iii) Veenita Baruta; and, (iv) Vaibhav Baruta to be having 1/5th undivided share each in the property.

17. Decree sheet be drawn up.

18. It is not in dispute that the property comprises of land *ad measuring* 159 sq. yds. and a ground floor, first floor and a *barsati* above the first floor.

19. Considering the size of the property and the number of shares therein, the property is found to be not capable of division by metes and bounds. No purpose will thus be served in issuing a commission for exploring the possibility of division by metes and bounds.

20. Once it is so, there is again no impediment to passing a final decree for partition, of sale of the property and of distribution of sale proceeds as per shares declared in the preliminary decree for partition.

21. A final decree for partition of property no.S-3B, Janta Market,
CS(OS) 172/2018

Rajouri Garden, New Delhi – 110 027 is also thus passed, of sale of the property and of distribution of sale proceeds amongst the parties as per shares declared in the preliminary decree for partition. However, before the property is put to sale, the parties shall be entitled to make *inter se* bids with respect thereto with the party whose bid is the maximum purchasing the share/s of the other/s against payment of the sale consideration of the share of others delivery of vacant peaceful possession and execution of documents. While the counsel for the plaintiff and the counsel for the defendants no.3&4 state that the defendant no.1 is in possession of substantial part of the property but the plaintiff and the defendants no.3&4 also are in possession of parts, the counsel for the defendant no.1 states that the defendant no.1 is in possession of the entire property. Whichsoever party is in possession, if fails to vacate the said portion in pursuance to the sale whether *inter se* or to an outsider, shall also liable to be ejected from the portion in his/her occupation as if in pursuance to a decree for possession.

22. The parties are left to bear their own costs.
23. Decree sheet be drawn up.
24. The costs imposed on last date have been paid by the defendant no.1.

RAJIV SAHAI ENDLAW, J

JANUARY 28, 2019
'pp'..