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

% *Date of decision: 08.05.2019*

+ CS(OS) 459/2017 and IA Nos. 11078/2017 & 12067/2018

PUSHPA DEVI BHARTI & ORS Plaintiffs
Through Mr.D.R.Bhatia and Ms.Vasundhara
Nayar, Advs.

versus

HARISH ARORA & ANR Defendants
Through Mr.Siddharth Khattar and Mr.Vikas
Sharma, Advs. for D-2.
Mr.Pradeep Kumar, Adv. for the proposed
defendant.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH. J. (ORAL)

1. This suit is filed by the plaintiffs seeking a preliminary decree of partition in favour of the plaintiffs and against the defendants declaring the share of plaintiff No. 1 as 15% and plaintiff Nos. 2 to 4 as 7.5% each in respect of the property No. 174, Block E, Kalkaji, New Delhi.
2. The case of the plaintiffs is that plaintiff No.1 purchased 15% undivided share in the suit property vide sale deed dated 15.12.2012 along with defendants No.1 and 2 who had 42.5% undivided share each in the suit property. Subsequently, on 29.11.2013, plaintiffs No. 2 to 4 purchased 7.5% each in the suit property from defendant No. 1 vide registered sale deed. Hence, the present suit for partition.
3. It appears that there is no dispute amongst the parties regarding the share of the plaintiffs and defendants.
4. I may only note that defendant No.1 despite service is not appearing

in the present case. Learned counsel for the plaintiffs and defendant No.2 submit that they have no objection, in case a preliminary decree of partition is passed as above regarding the suit property and the property be sold and the proceeds thereof be divided in terms of the aforementioned shares.

5. I may only note that an application has been filed under Order 1 Rule 10 CPC being IA No. 12067/2018 on behalf of Sh.Anees Jeelani, Sh.Prem Singh and Sh. Dinesh Kumar claiming that defendant No. 1 has sold 20% undivided share in the suit property to the applicants and hence, they may be impleaded as necessary and property parties to the suit. It is claimed that by registered sale deed dated 23.03.2018 this transaction took place.

6. Learned counsel appearing for defendant No.2 has however pointed out that the said defendant No.1 has absconded long back from the country on account of pending criminal cases. He has pointed out that the sale deed which is relied upon by the applicants in IA No. 12067/2018 dated 23.03.2018 is signed by one Sh.Omar Zahoor Shah, General Power of Attorney Holder of defendant No. 1/Harish Arora. Copy of the GPA has not been filed by the applicants. However, defendant No. 2 has filed a copy of the GPA dated 04.07.2017 along with his reply which is an unregistered general power of attorney. Learned counsel for defendant No. 2 states that no sale could have been affected on behalf of defendant No.1 through an unregistered general power of attorney and that the applicants are nothing but interlopers/local builders who are trying to jump into the property on noticing that defendant No. 1 is absconding. He has relied upon the judgments of this court in ***Smt.Indu Gulani@ Indu Pahuja & Anr. Vs. Sh.Sant Pal Singh***, CRP No. 145/2014 dated 24.09.2014 and ***Hira Singh Rawat vs. State of NCT of Delhi***, Bail Application No. 1860/2010 dated

25.02.2011 to state that attorney holder of an unregistered power of attorney cannot transfer a property.

7. The present suit of partition is filed based on the sale deed dated 05.12.2012 by which the suit property was bought by plaintiff No. 1 and defendants No. 1 and 2 respectively. Subsequently, plaintiff Nos. 2 to 4 have vide sale deed executed by defendant No. 1 himself bought 7.5% undivided share respectively in the suit property. There is no dispute on these facts.

8. There is, however, a controversy as to the title of the applicants in the suit property. Applicant claims title based on a sale deed executed by an unregistered power of attorney holder of defendant No.1.

9. I may look at the judgements relied upon by learned counsel for defendant No.2 to plead that such a post holder cannot sell the property. This court in ***Smt.Indu Gulani@ Indu Pahuja & Anr. Vs. Sh.Sant Pal Singh(supra)*** held as follows:-

“6. In my opinion, this deliberate concealment is because obviously in the general power of attorney, no consideration would have been shown to have been received by means of a cheque by the father of the respondent/plaintiff, also on the basis of an unregistered power of attorney a sale deed cannot be legal vide Sections 32 & 33 of the Registration Act, 1908 and if the General Power of Attorney in favour of the petitioner no.2, allegedly executed by Sh. Giri Lal is unregistered then the sale deed registered in favour of the petitioner no.1 is illegal and void.”

10. This court in ***Hira Singh Rawat vs. State of NCT of Delhi h(supra)*** held as follows:-

“3. It is settled law that in order to transfer a property on the basis of a Power of Attorney, the Power of Attorney itself must be a registered Power of Attorney and an unregistered Power of

Attorney does not entitle Power of Attorney holder to transfer the property. A Power of Attorney giving power to sell is as good as a conveyance deed and under Registration Act it is necessary that if a document transfers property of more than ` 100/-, it must be registered.”

11. In my opinion, the above controversy regarding the claim of the applicant cannot be made subject matter of the present suit proceedings. It is alien to the present proceedings. The plaintiff is dominus litis. This suit cannot be converted into a title suit between defendant No.1 and the applicants. By impleading the applicants the nature of the controversy would completely change.
12. I accordingly dismiss IA No. 12067/2018.
13. Accordingly, a preliminary decree of partition is passed declaring the share of plaintiff No.1 as 15%, plaintiff Nos. 2 to 4 as 7.5% each and the share of defendant No. 2 as 42.5% and the share of defendant No. 1 as 20%. It is agreed that the property be sold. Accordingly, a final decree of partition is passed for sale of the property and division of the sale proceeds as per the share.
14. I may only clarify that the issue raised by the applicants is kept open for them to file appropriate proceedings against defendant No. 1 to claim their title as per law.
15. The suit stands disposed of. All pending applications also stand disposed of.

JAYANT NATH, J

MAY 08, 2019/rb