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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 269/2020 & CM APPLs. 8086/2020, 8087/2020**

POONAM MALHOTRA Petitioner

Through: Mr. Rajiv K. Garg, Mr. Sandeep
Banga & Mr. Ashish Garg, Advocates
(M-9810602838)

versus

SWATANTAR CHOPRA & ANR Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **28.02.2020**

1. An advance copy is stated to have been served on the Respondents, however, none appears.
2. The present petition arises out of a suit for partition filed by the Petitioner/Plaintiff – Ms. Poonam Malhotra (*hereinafter, “Plaintiff”*) against Respondent No.1/Defendant – Mr. Swatantar Chopra (*hereinafter, “Defendant”*), in respect of property bearing shop no. 2A, ground floor, Janak Puri, Delhi (*hereinafter, “suit property”*).
3. An application under Order XII Rule 6 CPC was filed by the Plaintiff and a preliminary decree has already been passed by the Trial Court vide order dated 2nd July, 2018. The operative portion of the preliminary decree reads as under:

“...

In view of the above discussion, the unequivocal and categorical admissions on the part of the defendants, it is hereby concluded that the plaintiff and defendant No. 2 are joint owners and in joint possession of the suit property, as detailed in site plan marked as mark A, to the extent of 75% and 25% share respectively.

However, a final decree for partition of suit property in meets and bounds cannot be passed without conducting a proper inquiry. In these circumstances, a preliminary partition decree of the suit property is passed whereby the share of plaintiff and defendant No. 2 in the joint suit property, as detailed in site plan marked as mark A, is conclusively determined to be 3/4th and 1/4th share respectively. A preliminary decree be accordingly drawn. No order as to costs. The application under order 12 rule 6 CPC is accordingly disposed off.”

4. Thereafter some proposals were explored between the parties. The Plaintiff was willing to purchase the Defendant's 1/4th share for Rs.25 lakhs, however, the Defendant sought division of the property by metes and bounds. While the final decree of partition was pending, the Trial Court raised the issue of pecuniary jurisdiction and directed the amendment of the plaint vide the impugned order dated 29th January, 2020. The said order reads as under:

“Matter is fixed for order on the point of pecuniary jurisdiction. Perusal of plaint reveals that the suit has been valued for the purpose of relief of mandatory and permanent injunction but the same has not been properly valued for the purpose of jurisdiction. One opportunity is granted to the plaintiff to amend the plaint and properly value the suit for the purpose of jurisdiction.

Matter be re-notified for 04.02.2020.”

5. The submission of Mr. Rajiv K. Garg, ld. counsel, is that the preliminary decree having been passed, and the Defendant having never disputed the valuation of the suit in paragraph 26 of the plaint, there was no occasion for the Court to direct amendment of the plaint.

6. This Court has seen the previous orders, including the impugned

order. A perusal of the record shows that a preliminary decree has already been passed holding the Plaintiff to be entitled to 75% of the suit property and the Defendant to be entitled to 25% of the suit property. The suit now has to proceed further in respect of the final decree that is to be passed in the matter. At this stage, the Court need not go into the valuation of the suit. Upon the final decree being passed, the stamp duty/court fee would have to be paid by the parties depending upon the nature of the decree that is to be passed. In fact, a perusal of the order sheet shows that on the issue of valuation the written statement does not raise any challenge. The Court on its own, raised the issue of pecuniary jurisdiction after the preliminary decree was passed. Such an approach was not called for as, upon the passing of a final decree the Court could have clearly passed necessary directions for filing of requisite stamp duty etc. In a suit for partition, it is the settled legal position that fixed court fees is paid.

7. Accordingly, the impugned order is set-aside. The Trial Court shall now proceed to hear arguments on the question of the final decree to be passed in the matter. If the Court deems it appropriate, a Local Commissioner may also be appointed for consideration of the final decree to be passed.

8. The petition is disposed of in the above terms. All pending applications are also disposed of.

Dasti.

PRATHIBA M. SINGH, J.

FEBRUARY 28, 2020

Rahul/C