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

Reserved on : 25.08.2020
Pronounced on : 04.09.2020

+ **LPA 223/2020**

AVANTI MATHUR#

.... Appellant

Through: Mr.Rajeev Virmani,
Sr.Advocate with Mr.Himanshu
Yadav and Mr.Sarvesh
Chowdhry, Advocates.

versus

RAM GOPAL GUPTA

.... Respondent

Through: Mr. Prabhjit Jauhar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The appellant, who is the defendant in the suit, has preferred this intra-court appeal impugning the order dated 24.07.2020 passed by the learned Single Judge in CS (OS) 292/2019, disposing of the interim application [I.A. No. 4686/2020] preferred by the Appellant seeking framing of additional issues.

2. Briefly stated, the facts of the case, as set out in the pleadings, are that the appellant is the daughter-in-law of the respondent herein, who is the plaintiff in the suit. The appellant, her husband Mr. Praneet Gupta, and the respondent, jointly purchased the property bearing No. C-2/43, 2nd Floor,

Safdarjung Development Area (SDA), New Delhi – 110016 ('suit property') vide sale deed dated 04.02.2014. The said title document delineates the undivided shares of Mr Praneet Gupta, the respondent and the appellant in the ratio of 80:15:5, respectively. Vide gift deed dated 08.06.2018, Mr. Praneet Gupta gifted his 80% undivided share to the respondent. Subsequently, the respondent claiming to have 95% share in the suit property, filed the suit for partition.

3. In the written statement, filed in response to the plaint, appellant *inter-alia*, vehemently disputes and controverts the averments of the respondent/plaintiff *qua* possession of the suit property. She contends that the respondent has falsely alleged to be in actual physical possession of one room in the suit property. She also strongly refutes that respondent and his wife used to reside therein. She contends that the suit property was purchased for the use of Mr. Praneet Gupta and herself and it is they who along with their minor son, were residing therein. On 26.12.2017, Mr. Praneet Gupta shifted to residence of the respondent/plaintiff at C-4/107 Safdarjung Development Area, New Delhi 110016 and the respondent/plaintiff has never been in physical possession of the suit property or any part thereof at any point of time.

4. On completion of pleadings, vide order dated 16.06.2020, issues were framed. According to the appellant, certain issues escaped consideration. She filed I.A. No. 4686/2020 seeking framing of additional issue. The prayer was declined, vide order impugned in the present appeal.

5. Mr. Virmani, learned Senior counsel appearing on behalf of the appellant contends that the impugned order deserves to be set aside and the additional issues urged by the appellant ought to be framed. According to him, the

plaintiff/respondent is falsely claiming ownership to the extent of 95% in the suit property. Respondent's assertion *qua* possession of one room in the suit property is also a false claim. He referred to the pleadings in the suit and pointed out that the appellant/defendant in her written statement had specifically disputed respondent's possession and raised objection as to its maintainability. He submitted that since the appellant has categorically denied respondent/plaintiff's physical possession on any part of the suit property, maintainability of the suit for partition without seeking the recovery of possession will be a necessary issue for its proper adjudication. He also urged that since material fact is in dispute, framing of additional issues is imperative, under Order XIV of the CPC.

6. Per contra, Mr. Prabhjit Jauhar, learned counsel for the respondent who, appears on an advance notice, submitted that the issues as framed by this Court are sufficient to decide the real controversy between the parties. Mr. Jauhar, further submitted that issue no. 3 framed vide order dated 16.06.2020 which deals with valuation for the purposes of jurisdiction and Court fees would adequately take care of the apprehension and objection of the appellant. He further submitted that the findings and observations of the learned Single Judge are well founded, based on the judgments of the Supreme Court in the cases of *Syed Shah Ghulam Ghouse Mohiuddin and Ors. vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri(Died) Lrs and Ors*, 1971 (1) SCC 597 and *Karbalia Begum vs. Mohd Sayeed and Anr.*, (1980) 4 SCC 396.

7. We have given due consideration to the submissions advanced by the learned counsel. The learned Single Judge after due consideration of the contentions urged by the appellant dismissed the application inter-alia for the following reasons :

“9. Ms. Hingorani says that additional issue no. 2 is required to be framed as a preliminary issue, as according to her, the plaintiff is not in possession of the suit property and given the fact that no relief of possession is sought, the suit is not maintainable.

9.1 In support of this contention, additional issue no. 1 is also pressed for being framed by the Court.

10. I must indicate that insofar as additional issue no. 3 is concerned, the defendant requires this Court to frame an issue as to whether the plaintiff is the owner of any part of the suit property in his own right?

11. According to me, issue no. 1, as originally framed on 16.06.2020, which is omnibus in nature, covers this aspect of the matter.

12. The argument of Ms. Hingorani that because the plaintiff has not sought a specific relief of possession, therefore, the suit is not maintainable, to my mind, is an argument which is not sustainable for the reasons given hereafter.

13. Ms. Hingorani, in support of her submission, vis-à-vis the absence of a specific relief of possession, relies upon the following judgements:

*(i) **Harphool Singh vs. Daropati and Ors.**, MANU/DE/0750/2011.*

*(ii) **Venkataraja and Ors. vs. Vidyane Doureradjaperumal (D) Thr.***

***L.Rs. and Ors.**, MANU/SC/0354/2013.*

13.1 A careful perusal of the prayer made in the plaint would show that first of all the relief for possession [i.e. of defined shares] is embedded in it inasmuch while seeking a preliminary decree qua shares in the suit property, division by way of metes and bounds is sought or, in the alternative, its sale with distribution of proceeds in accordance with Court determined share.

13.2 Secondly, the parties, in effect, are co-owners in the suit property. Their relationship is akin to tenants-in-common and, therefore, till division is ordered, there is unity of possession i.e. each co-owner has an equal right to each and every part and parcel of the suit property.

13.3 Besides this, as noticed above, not only is there a sale deed on record but there is an emphatic assertion that the plaintiff is in possession of a portion of the suit property. This position emerges upon a reading of the plaint along with the replication in the suit.

13.3 Ms. Hingorani says that this is an improvement by the plaintiff of his case in the replication.

14. According to me, it cannot be termed as an improvement as it is only an elucidation of what was stated by the plaintiff in paragraph 8 of the plaint.

15. It is correctly argued by Mr. Prabhjit Jauhar, who appears on behalf of the plaintiff that the rights of the parties flow from the principal document i.e. the sale deed which records the shares of, both, the plaintiff and the defendant.

16. Ms. Hingorani emphasizes that since title to the suit property does not emanate from a common predecessor, the plaintiff would be required to seek the relief of possession, failing which, the suit would not be maintainable.

16.1 Ms. Hingorani is right to the limited extent that title is not claimed from a common predecessor. However, in my view, there can be no impediment in the plaintiff seeking partition based on title flowing from the sale deed.

16.2 The plaintiff is the co-owner of the suit property. The shares are clearly defined in the suit property.

16.3 The plaintiff has pleaded, for whatever it is worth, that he was in possession of a portion of the suit property i.e. one bedroom.

17. Therefore, the prayers made in the plaint for partition are viable provided that the plaintiff is able to prove his case at trial.

17.1 The judgements cited by Ms. Hingorani, in my view, are distinguishable given the facts set out hereinabove.

17.2 This is not a case where the plaintiff has no share in the suit property or that he has not pleaded that he is in possession of a portion of the suit property.

17.3 It would be the subject matter of trial as to whether the submission of the plaintiff that he was in physical possession of the suit property is correct or not.

18. Looking at the matter, in any which ways, the plaintiff, to my mind, can seek partition even on the basis of constructive possession.”

8. On the basis of the record produced before us, it appears that the respondent/plaintiff has filed suit for partition of the suit property seeking its division by metes and bounds and in the alternative, he has prayed for sale of the property by auction and for distribution of the sale proceeds, inter se the parties, to the extent of the shares claimed in the suit. The learned Single Judge has declined to frame the additional issues essentially for the reason that the relief of possession is embedded in the decree sought by the plaintiff. It has also been held that till division is ordered, there is unity of possession that each co-owner has an equal right in each and every part and parcel of the suit property. These observations of the learned Single Judge are based on the well-established principles of law relating to suit for partition. It is well settled proposition in law that a plaintiff can seek partition even on basis of constructive possession. The general principle of law in case of co-ownership is that, the possession of one, is possession of all, unless ouster or exclusion is proved. It is not necessary for the Plaintiff to be in actual possession to seek a partition. Thus, merely because the

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Appellant is at variance on the material proposition qua Respondent's possession does not mean that it should have mechanically resulted in an issue. It is the obligation of the court to frame issues that would lay down the path on which the trial would proceed in order to decide the real controversy between the parties. The issues as framed, sufficiently take care of this aspect and we see no necessity to frame additional issues, as sought by the appellant.

9. In view of the above, in our considered opinion, there is no infirmity in the impugned order. There is no merit in the present appeal and accordingly the same is dismissed. No order as to costs.

CM APPL. 20370/2020 (for Ad-Interim Stay)

10. In view of the order passed in the present appeal, the application is dismissed.

SANJEEV NARULA, J

MANMOHAN, J

SEPTEMBER 04, 2020

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