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

\+ RFA(OS) 70/2019, C.M. Nos.2165/2020 & 34530-31/2019

ANAND KUMAR MANGLA ..... Appellant

Through: Mr. Shiv Charan Garg and Mr Imran Khan, Advocates

versus

KESAR & ORS ..... Respondents

Through: Mr. Jagdeep Kumar Sharma and Mr. Mahesh Singh, Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% 03.03.2020

1. The appellant/plaintiff is aggrieved by the judgment dated 26.03.2019, whereby a consent decree has been passed in respect of premises No. D-157, Kamla Nagar, Delhi, in a suit for partition, rendition of account and permanent injunction instituted by him against the respondents/defendants.

2. Following were the reliefs prayed for by the appellant in CS (OS) No. 604/2016:-

> *"a) a preliminary decree of partition be passed in favour of plaintiff and against the defendant nos.1 to 3, declaring the plaintiff as owner of half-share in movable and immovable property, D-157, Kamla Nagar, Delhi and defendant nos.1 to 5 be declared owners of half-share;*

b) That thereafter a Local Commissioner be appointed to go into mode of partition of immovable property D-157, Kamla Nagar, Delhi and plaintiff be given possession of half-share by dividing the property by metes and bounds with separate possession in all respect.

c) That a decree of rendition of account be also passed in favour of plaintiff and against the defendant nos. 1 to 5 holding them accounting party and after rendition of account decree to the extent of half-share be passed in favour of plaintiff and against the defendant nos.1 to 5. There is no commercial matter in this regard.

d) any other order as may be deemed fit and proper in view of the above facts and circumstances may also be passed in favour of the Plaintiff and against the Defendants.

3. On 03.05.2018, when the suit was listed before the learned Single Judge, learned counsel for the parties had agreed that the appellant/plaintiff is entitled to 50% undivided share in the suit premises and the defendants No. 1-5 collectively, to the remaining 50% share. The parties had also agreed that they were willing to sell the suit premises and divide the sale proceeds in proportion to their shares.

4. After recording the said submission, the learned Single Judge directed counsel for the appellant/plaintiff to inform the other side what the market price of the suit premises was, within a fixed time and the respondents/defendants were directed to identify a suitable purchaser. Thereafter, the suit was adjourned from time to time.

5. On 26.03.2019, learned counsel for the appellant/plaintiff had submitted before the learned Single Judge that the respondents were not permitting sale of the suit premises and were trying to create hurdles. It was further submitted that hearing in the suit be adjourned to enable the appellant/plaintiff to place a proposal for partitioning the suit premises by metes and bounds so that the respondents/defendants could take up either of the two lots and each party can then deal with their respective portion of the property.

6. Counsel for the respondents/defendants had refuted the submissions made by the other side that they were putting a spanner in the wheels and were preventing the appellant/plaintiff from finding a suitable buyer. It was submitted that it is the appellant/plaintiff who is in possession of a part of the suit premises and the respondents were staying outside and though, he was the best person capable of selling the property, he was dilly-dallying. A request was thus made on behalf of the respondents/defendants for passing a decree for partition and sale of the property and distribution of the sale proceeds.

7. On considering the submission made by both sides, the learned Single Judge observed that the parties having already agreed on 03.05.2018, to sell the suit premises and share the sale proceeds amongst them in proportion to their respective shares, they cannot be permitted to renege from the settlement arrived at and therefore, the only option available to the court was to pass a decree of partition for sale of the property. Accordingly, a preliminary decree of partition was passed by declaring

the appellant/plaintiff as entitled to 50% undivided share in the suit premises and the defendants No. 1-5 collectively, to the remaining 50% undivided share.

8. After drawing a preliminary decree for partition, a final decree was also passed for the sale of the suit premises and distribution of the sale proceeds between the parties as per their respective shares in terms of the preliminary decree. The other procedural details pertaining to the sale of the suit premises and regarding its vacant possession and sale in the open market were also recorded and a decree-sheet was directed to be drawn.

9. It is the contention of Mr. Garg, learned counsel for the appellant/plaintiff that while decreeing the suit, the learned Single Judge failed to grant a decree of rendition of accounts as was prayed for in para (c) of the prayer clause. On enquiring from learned counsel for the appellant to clarify as to what were the accounts that he wanted rendition and in respect of which property, whether movable or immovable, he seeks to draw the attention of this court to the averments made in paras 10 and 11 of the plaint.

10. We may note that in para 10 of the plaint, the appellant/plaintiff has referred to the jewellery owned by late Mrs. Gomti Devi, mother of the parties and has quantified the value of the said jewellery at Rs.3,00200/-, in terms of the Wealth Tax Assessment Order. The value of the jewellery being known to the appellant/plaintiff there was no occasion to seek “rendition of accounts”. In para 11, the appellant/plaintiff has averred that late Mrs. Gomti Devi had a bank account wherein a sum of Rs.4,00,000/- was transferred by her into a proprietary firm of the respondent No.2 and the

said amount was carrying interest, which was to the knowledge of the defendants No. 1 and 2. The proprietary firm is not a party in the suit for the appellant/plaintiff to "seek rendition of accounts" from it.

11. In the absence of any material particulars mentioned by the appellant/plaintiff indicating the nature of accounts that he wanted rendition of, in terms of prayer clause (c), except for making a bald averment to the effect that he is entitled to 50% share, no challenge can be laid to the impugned judgment.

12. It is also relevant to note that during the pendency of the present appeal, the appellant/plaintiff had filed a review application, registered as Review Petition No.439/2019, for seeking review of the impugned judgment, which was dismissed by the learned Single Judge on 21.10.2019. It was observed in the said order that a preliminary decree of partition was a consent decree whereunder, the respondents had given up their contest to the suit instituted by the appellant and had agreed to sale of the suit premises and on the said date, learned counsel for the appellant/plaintiff did not seek the relief of rendition of accounts, rather, he had agreed to sell the suit premises as was requested by the respondents.

13. It was in the aforesaid background that first a preliminary decree of partition was passed, followed by a final decree of partition on the sale of the suit premises and distribution of the sale proceeds between the parties.

14. We are of the opinion that once the parties had agreed to the disposal of the suit in a particular manner, the inference is that the appellant/plaintiff had not pressed for the remaining reliefs in the suit, when the matter was

taken up on 26.3.2019. Now, the appellant/plaintiff cannot be permitted to set the clock back and seek the relief in prayer (c) of the plaint. The consent order passed on 3.5.2018 and reiterated on 26.3.2019, has resulted in a final decree.

15. Accordingly, the present appeal is found to be meritless and is dismissed in *limine* alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

MARCH 03, 2020
hsk/NA/ap