

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

% **Date of decision: 25th February, 2020.**

+ **CS(OS) 250/2018 & IA No.7140/2018 (u/O XXXIX R-1&2 CPC)**

MANOJ KUMAR AGGARWAL **..... Plaintiff**

Through: Mr. Ankit Gupta, Adv. with plaintiff
in person.

Versus

PUSHPA RANI **..... Defendant**

Through: Mr. Narendra Sharma, Adv. with Mr.
Pulkit Gupta and Mr. Ankur Gupta
sons of defendant.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for partition of property No.21, Central Lane, Bengali Market, New Delhi comprising of a single storey building constructed over leasehold land admeasuring 330 sq. yds., and for permanent injunction to restrain the defendant from creating third party rights with respect to the property.

2. The suit came up first before this Court on 22nd May, 2018, when summons thereof were ordered to be issued and both the parties directed to maintain *status-quo* with respect to possession and title of the property.

3. Pleadings have been completed and the suit, ripe for framing of issues, came up before this Court yesterday i.e. on 24th February, 2020 when Mr. Narendra Sharma, Advocate for the defendant did not appear on first call and on counsel for the plaintiff being asked to telephonically call him, Ms. Smita Rajgarhia, Advocate appeared on his behalf and informed that the

defendant had died on 16th February, 2020. On oral request of the counsel for the plaintiff, the two sons and three daughters of the defendant were substituted in place of the deceased defendant, vide yesterday's order.

4. It was also the contention of the counsel for the plaintiff yesterday that the defendant, in her written statement had admitted that the plaintiff and the defendant had equal share in the property and that there is thus no impediment to partition of the property. On such contention of the counsel for the plaintiff, the matter was kept for today, for Mr. Narendra Sharma, Advocate for the defendant to appear.

5. Mr. Narendra Sharma, Advocate has appeared and on being asked the defence, if any to the suit, states that a preliminary decree for partition declaring the plaintiff to be having 50% share in the property and the legal heirs aforesaid of the defendant to be having the remaining 50% share in the property, be passed. He also states that out of the total land admeasuring 330 sq. yds. a single dwelling unit construction exists only on about 110 sq. yds. and it is not possible to divide the property by metes and bound and the heirs of the deceased defendant are willing to sell their 50% share in the property to the plaintiff, or the property be sold and the sale proceeds be distributed as per the shares declared in the preliminary decree for partition. He also states that owing to the property being situated in Lutyens Bungalow Zone (LBZ), no additions, alterations or constructions are permitted with respect thereto.

6. I have enquired from the counsel for the plaintiff, whether the plaintiff is desirous of buying the share of the heirs of the defendants.

7. The counsel for the plaintiff states that the plaintiff is unable to.

8. It has next been suggested to the counsel for the plaintiff, that the property be sold and the sale proceeds be divided.

9. The counsel for the plaintiff states that the plaintiff as well as deceased defendant were residing in the property and the plaintiff wants to continue living in the house.

10. The plaintiff should not have then sued for partition. Once a suit for partition has been filed, on finding that the property cannot be divided by metes and bounds, there is no other option but to sell the property with option for *inter se* bidding.

11. A perusal of the site plan filed by the plaintiff and admitted by the defendant i.e. Ex.P-1 confirms that the property is a single dwelling unit with one kitchen and one WC and bath and is incapable of division by metes and bounds. Though the counsel for the plaintiff has sought to contend that construction is not prohibited but judicial notice can be taken of the fact that construction, addition or alteration in LBZ, in which the property is situated, is not permitted as per the LBZ Guidelines dated 8th February, 1988 as modified by Letter dated 22nd December, 2003 and the Master Plan for Delhi – 2021.

12. The counsel for the plaintiff with reference to Ex.P-1 itself, has proposed division of the property lengthwise.

13. As per Ex.P-1, the frontage/width of the property is 22 feet 6 inches and the length of the property is 132 feet and the property, as per the layout plan is a single dwelling unit and cannot legally be converted into two dwelling units.

14. Thus, the counsel for the defendant is correct in his contention that the property is indivisible by metes and bounds.

15. Partition by metes and bounds, contrary to law, cannot be effected. Reference in this regard may be made to *Neeta Sarda Vs. Aditya Sarda* 2018 SCC OnLine Del 11964.

16. There is thus no option but to pass a final decree for partition also, of sale of the property, leaving it open to the parties to make *inter se* bids.

17. A preliminary decree for partition of property No.21, Central Lane, Bengali Market, New Delhi is thus passed, declaring the plaintiff Manoj Kumar Aggarwal to be having 50% undivided share therein and declaring the heirs, namely Ankur Gupta, Pulkit Gupta, Neeru Gupta, Mala Gupta and Ruchi Gupta, of deceased defendant Pushpa Rani together to be having the remaining 50% undivided share therein.

18. Preliminary decree for partition be drawn up.

19. A final decree for partition of property No.21, Central Lane, Bengali Market, New Delhi is also passed, of sale thereof and of distribution of sale proceeds between the parties as per shares declared in the preliminary decree for partition.

20. However before the property is sold to outsiders, the parties shall be entitled to make *inter se* bids, with the party making the highest bid, acquiring the share of the other, against payment of the bid amount/consideration, delivery of possession of the portion in occupation of the other party and execution of requisite documents.

21. Whichsoever party in possession of the property, if fails to vacate the portion of the property in his/her occupation, on sale/bid aforesaid, shall be liable to be dispossessed therefrom as if in pursuance to a decree for recovery of possession of immovable property.

22. Final decree for partition be drawn up, leaving the parties to bear their own costs.

23. The stamp duty on the final decree for partition to be borne by the parties as per shares declared in the preliminary decree for partition.

FEBRUARY 25, 2020
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RAJIV SAHAI ENDLAW, J.



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