

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

% **Date of decision: 6th January, 2020.**

+ **CS(OS) 390/2018 & IAs No.10492/2018 (u/O XXXIX R-1&2 CPC), 11811/2018 (of D-9 u/O XXXIX R-4 CPC) & 12021/2018 (of D-1 to 8 u/O XXXIX R-4 CPC)**

SHABNAM

..... Plaintiff

Through: Mr. Rajesh Bhatia and Mr. Shivam,
Advs. with plaintiff and her husband
in person.

Versus

GULSHAN & ORS

..... Defendants

Through: Mr. Ankit Jain and Mr. Abhay Pratap
Singh, Advs. for D-1 to 8.
Mr. Mohit Gupta, Mr. Vishal Saxena,
Ms. Meenakshi Garg and Mr. Nidhi
Samanotra, Advs. for D-9.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit against her eight sisters namely (i) Gulshan, (ii) Samina Bano, (iii) Husna, (iv) Razia, (v) Parveen Begum, (vi) Nasim, (vii) Shahnaj Bano Rangrej and (viii) Yasmeen and against defendant No.9 Mahesh Kumar Parwal, for partition of property No.E-2A, Mansarovar Garden, New Delhi constructed on land admeasuring 247 sq. yds. and comprising of ground floor (except one godown, sold by common ancestor of plaintiff and defendants No.1 to 8 in her lifetime), first floor and third floor with open terrace above, claiming 1/9th undivided share therein and pleading that the defendants No.1 to 8 had sold their undivided 8/9th share in the property to the defendant No.9 Mahesh Kumar Parwal. No

partition of second floor of the property, also sold by common ancestor aforesaid in her lifetime, was sought

2. The suit came up first before this Court on 8th August, 2018, when summons thereof were ordered to be issued and *status-quo* qua title and possession claimed by the plaintiff of front portion of the third floor of the property, directed to be maintained.

3. The defendants No.1 to 8 have filed a common written statement. The defendant No.9 has filed a separate written statement.

4. It is the plea of the defendants No.1 to 8 as well as of the defendant No.9 in their respective written statements, that the plaintiff had agreed to sell her 1/9th undivided share in the property to the defendants No.1 to 8 for Rs.45 lacs and received Rs.5 lacs in advance from the defendants No.1 to 8. The defendant No.9 additionally pleaded, that it was represented to him by defendants No.1 to 8 at the time of sale that the property had been verbally partitioned between plaintiff and defendants No.1 to 8 and in which partition the portion of the third floor in possession of plaintiff had fallen to the exclusive share of the plaintiff.

5. A perusal of the sale deed executed by the defendants No.1 to 8 in favour of the defendant No.9 shows the same to be with respect to 8/9th undivided share of the defendants No.1 to 8 in the property of which partition is sought in the suit. The same negates the plea in the written statement of defendant No.9, of a verbal partition in which the front portion of the third floor in occupation of the plaintiff had fallen to the exclusive share of the plaintiff.

6. As far as the plea of the defendants, of the plaintiff having agreed to sell her 1/9th undivided share to the defendants No.1 to 8 for Rs.45 lacs, is

concerned, the counsel for the defendants No.1 to 8 states that a suit for specific performance of the said agreement has been filed and the same is pending in the Court of Ms. Charu Aggarwal, Additional District Judge, Tis Hazari Courts, Delhi. On enquiry, it is informed that the plaintiff is denying any agreement to sell or receipt of Rs.5 lacs.

7. Today, it has been mutually and amicably agreed by the plaintiff, the counsel for the defendants No.1 to 8 and the counsel for the defendant No.9 (with counsels acting under instructions of their respective clients):

- (A) that the property be partitioned by metes and bounds, with the front portion of the third floor already in possession of the plaintiff and shown in red colour in the site plan filed by the plaintiff with the plaint and on which today Ex.C-1 is put, falling to the exclusive share of the plaintiff and the remaining property, for partition of which the suit is filed including the portion of the property since sold by defendants No.1 to 8 to defendant No.9, falling to the exclusive share of defendant No.9;
- (B) that the plaintiff is not in possession of any other portion of the property except the front portion of the third floor and if in possession of any other portion, shall be liable to be dispossessed therefrom;
- (C) that the plaintiff, besides being exclusive owner of the aforesaid portion, shall also have right only to use in common with other occupants including defendant No.9 of the property, of open terrace above third floor, for the purpose of installation of water tank, antenna and for visit for airing, without however any ownership or other right of making any construction thereon;

- (D) that the plaintiff shall forthwith open the lock put by her on the opening at the level of the terrace above third floor of the rear staircase in the property and not obstruct use of the terrace by other occupants including defendant No.9;
- (E) that the staircase at the front of the property, from the level of the ground floor till the level of third floor, shall be used in common by the plaintiff and the defendant No.9 and other occupants of the property; however the staircase from inside the portion aforesaid of the plaintiff on the third floor, to the open terrace above, shall be used exclusively by the plaintiff;
- (F) that the use of the rear staircase, upto the level of the terrace, shall be as per the desire of the defendant No.9 and of any other having right thereto;
- (G) that in case of any construction being raised at the level of terrace above third floor by defendant No.9 or by any other person, a provision shall be made for access to the top open terrace, from the portion of the plaintiff and the plaintiff shall then have right to use of the said open terrace above the top most floor, as of terrace above the third floor; and,
- (H) that as far as the suit for specific performance filed by the defendants No.1 to 8 against the plaintiff is concerned, the relief therein shall be confined to the claim of the defendants No.1 to 8 for recovery of Rs.5 lacs, claimed by them to have been paid under the agreement to sell to the plaintiff, and denied by the plaintiff, and the defendants No.1 to 8 shall not be entitled to the relief of specific performance.

8. The aforesaid settlement/compromise arrived at between the parties is found to be lawful, save for the principles of inheritance under the Mohammedan Law.

9. Thus, a preliminary decree for partition of ground floor, except one godown sold by the mother of the plaintiff and the defendants No.1 to 8 in her lifetime, first floor and third floor with open terrace above, of property No.E-2A, Mansarovar Garden, New Delhi alongwith rights in land underneath the same, is passed, declaring the plaintiff to be having 1/9th undivided share therein and the defendant No.9, as purchaser from defendants No.1 to 8 of 8/9th undivided share of defendants No.1 to 8 in the property, to be having 8/9th undivided share in the property.

10. Preliminary decree for partition be drawn up.

11. A final decree for partition of the property is also passed, of partition thereof by metes and bound, in terms of above, leaving the parties to bear their own costs.

12. The stamp duty payable on the decree for partition is agreed to be paid by the plaintiff.

13. Final decree for partition be drawn up, with this order forming part of the final decree for partition.

RAJIV SAHAI ENDLAW, J.

JANUARY 06, 2020

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