

\$~61

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

+ **CM(M) 1188/2022 & CM APPL. 47460/2022**

AMIT RAINA Petitioner

Through: Mr. Aditya Kala, Adv.

versus

AKSHAY RAINA Respondent

Through: Mr. Anees Ahmed, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (O R A L)

% **09.11.2022**

1. CS 10676/16 was instituted by the respondent as the plaintiff against the petitioner as the defendant, seeking a decree of partition in respect of property situated at 1016/17, Kucha Shareef Baig, Bazar Sita Ram, Delhi, to the extent of 1/7th of the share of Saroop Kishan Raina (who happens to be the father of the parties before me). Additionally, the plaintiff sought a decree of permanent injunction against creation, by the respondent, of any third party interest in respect of the suit property.

2. The case of the respondent as set out in the plaint, maybe briefly noted thus.

3. Pandit Mahraj Kishan Raina was the absolute owner of the suit property. He died on 10th March 1958, intestate. Saroop Kishan Raina, the father of the parties before me, was his son. After the death of Mahraj Kishan Raina, Ramesh Kumar Raina, one of his other sons

Neutral Citation Number: 2022/DHC/004736
and the brother of Saroop Kishan Raina, filed Suit No.292/03 (*Ramesh Kumar Raina v. Saroop Kishan Raina*) before the learned District Judge, seeking partition of the suit property. A preliminary decree dated 19th March 2004 was passed with the said suit, whereby the shares of the legal heirs of Maharaj Kishan Raina were determined. The share of the Saroop Kishan Raina, in the state of Maharaj Kishan Raina, was determined as 1/7th of the suit property. The partition suit was finally decreed on 20th February 2008, and Saroop Kishan Raina was finally held entitled to 1/7th of the suit property.

4. In execution proceedings, instituted for execution of the aforesaid final decree dated 20th February 2008, a Local Commissioner was appointed by the Executing Court. The Local Commissioner submitted his report on 10th October 2011, delineating the portions which fell to the shares of the various legal heirs of Maharaj Kishan Raina. *Vide* final order/decreed dated 16th March 2012, the parties were held to be entitled to occupy and possess their respective portions as per the aforesaid report of the learned Local Commissioner.

5. Saroop Kishan Raina expired on 4th January 2013. As a result, the petitioner and respondent, together, asserts the plaint, became entitled to 1/7th share in the suit property, of which each would be entitled to half of the said share.

6. As already noted, CS 10676/2016 was instituted by the respondent against the petitioner seeking partition of the aforesaid

1/7th share of the suit property, which fell to their lot consequent on the death of Saroop Kishan Raina.

7. The petitioner, in his written statement filed by way of response to the suit instituted by the respondent, pleaded, *inter alia*, that, by way of an oral arrangement put in place by Saroop Kishan Raina in December 2004, Saroop Kishan Raina had directed the respondent to occupy the ground floor and the petitioner to occupy the first floor of the suit property.

8. Other assertions and asseverations, contained in the written statement filed by the petitioner by way of response to the suit instituted by the respondent, are not of particular relevance to the controversy at hand.

9. During the course of recording of defence evidence, the petitioner filed an application seeking to place on record (i) an apology letter dated 19th April 2004, allegedly written by the respondent, (ii) an electricity bill dated 6th April 2019, issued by the BSES Yamuna Power Ltd. in respect of the suit property and (iii) certain complaints dated 4th October 2005, 31st January 2007 and 16th April 2014, addressed by the petitioner against the respondent with the police authorities, alleging that the respondent was not permitting the petitioner to continue to reside peacefully in the suit property.

10. The said application has been rejected by the learned Additional District Judge (the learned ADJ) *vide* the impugned order dated 1st August 2022.

11. The reasoning of the learned ADJ, in rejecting the petitioner's request is contained in the following passage from the impugned order:

“CS No.10676/16

Akshay Raina Vs. Sh. Amit Raina.
01.08.2022

Present: Sh. Rizwan proxy counsel for Sh. Anees Ahmed,
Ld. Counsel for plaintiff.
Sh. Aditya Kala, Ld. Counsel for defendant.

By this order, I will dispose of application dated 19.04.2022 of the defendant seeking permission to file documents.

The brief facts of the case necessary to dispose of this application are that there is a property bearing no. 1016/17, Kutcha Sharif Beg, Sitaram Bazar, Delhi. Earlier this property was owned by Pt. Maharaj Kishan Raina. He died. A suit for partition was filed by the children of Pt. Maharaj Kishan Raina. Father of the plaintiffs was given 1/7th share in the suit property specifically shown in site plan Ex. CX1 (in the report of Ld. LC Ex. CX).

The present suit is filed by the plaintiff against the defendant for partition of that 1/7th part of the property.

In the written statement filed on behalf of defendant, it is stated that, during lifetime of their father, an oral partition/separation took place in which defendant was given the ground floor and plaintiff was given the first floor from 1/7th share.

Issues were framed. Plaintiff led his evidence and now the defendant is leading evidence.

In this application, it is stated that defendant came to know about some documents from an old almirah and he wants now to place on record. It is stated that these documents shall throw light on the fact of oral

Neutral Citation Number: 2022/DHC/004736

separation and the apology sought by plaintiff from the father.

In the reply to this application, it is stated that this application is not maintainable at this stage. The documents are false and fabricated and even does not throw any light to the dispute in this case.

I have gone through the record, pleadings of this application and submissions forwarded by counsels for parties.

Now, as per the record and the issues framed, it appears that it is the defendant to prove the oral partition/separation. The documents appended with this application does not throw any light to the controversy before this court. Even no ground is made out for moving this application which should have been u/o 8 rule 1A CPC. Accordingly, the application is dismissed.

Put up for DE on 31.10.2022.”

12. Mr. Anees Ahmed, learned Counsel for the respondent has no objection to the petitioner placing on record the electricity bill dated 6th April 2019 though, according to him, no particular benefit would be derived by the petitioner from the said document. He, however, opposes the request of the petitioner for placing the remaining documents on record.

13. Having heard Mr. Aditya Kala, learned Counsel for the petitioner and having perused the documents that the petitioner seeks to place on record, I find myself in agreement with the learned ADJ in his view that the documents that the petitioner seeks to place on record are completely immaterial to the controversy before the learned ADJ in the suit pending before him.

14. The apology letter dated 19th April 2004, that the petitioner

seeks to place on record reads as under :

“I, feel sorry for all the hurt sentiments of Amit that Amit requested me to wash the dirty hands of my pet dog. Instead I did not wash before opening sweets Lucknow after returning from Lucknow. That I feel sorry for saying that he will not secure job in future in presence of Goverdhan Ji instead I spoke to him badly after his normal request about washing hands.

Sd/-
(Akshay Raina)
19/4/2004”

15. It is obvious that the afore-extracted letter can have no relevance whatsoever to the contention, advanced by the petitioner in his written statement filed by way of response to the suit instituted by the respondent, that an oral partition of the suit property, at the instance of Saroop Kishan Raina, took place in December 2004.

16. The other documents which the petitioner sought to place on record were complaints made by him against the respondent before the police authorities on 4th October 2005, 31st January 2007 and 16th April 2014. Mr. Kala, to a query from the Court, submits that these documents would indicate that the petitioner and the respondent were not on amicable terms and would, therefore, underscore the reason for their father Saroop Kishan Raina deciding to orally partition the property.

17. The oral partition of the property, even as per the written statement filed by the petitioner, took place in December 2004. The complaints dated 4th October 2005, 31st January 2007 and 16th April 2014, which the petitioner desired to place on record, were written much after the partition took place, assuming that the alleged partition

Neutral Citation Number: 2022/DHC/004736
did take place as contended in the written statement. For the sake of
clarity, these complaints may also be reproduced thus:

Complaint dated 4th October 2005

“To

The Station House Officer,
P.S. Hauz Qazi,
Delhi-110006

Sub:- Complaint against Akshay & his wife etc. Ram Bazar,
Delhi-110006

Sir,
That I Amit Raina S/o Sh. Sarup Kishan Rainia R/o of 1016,
Kucha Sharif Beg, Delhi-110006, is living with my family at my
fathers house with him.

That I am living peacefully with my father at my/our ground floor-
rooms & my wife Smt. Radha is that I am taking almost all care of
my father with complete responsibility.

That today Akshay came to me & threatened me with dire
consequences, if I did not bother to obey for all their uncalled for
demands.

That Akshay has been threatening to me against all my movable &
immovable properties at Delhi & Jodhpur (Rajasthan).

That I have been making complaints against him earlier also & also
against his un-lawful threats.

That today Akshay's wife also again threatened me if I did not
remove my lock which I put by my father's permission &
instructions.

That today his wife Sangeeta has also threatened me with dire
consequences & also threatened that his real brother could cause
me damages as he is some member of BJP.

That this is another episode of torture & mental harassments by
Akshay & his wife etc.

Thanking you

Yours faithfully,
Sd/-
(Amit Raina)”

Complaint dated 31st January 2007

To,

The S.H.O.
P.S. Hauz Quzi
Distt. Central,
Delhi-I 10006

Sub: Complaint against Akshay Raina, etc R/o 1016/ Sita Ram Bazar, Delhi-110006, about His un-lawful behaviour - who has threatened me to disposes from my house premises with this help of this wife and his in-laws etc.

Sir,

With due regards, I Amit Raina, s/o Sh. S.K. Raina R/o 1016, Sita Ram Bazar, Delhi-110006.

Submits as under:-

1. That I am living as a peaceful citizen of India alongwith my wife and childrens/with my at the above mentioned address.
2. That I am my wife and has been taking care of my father in his old age.
3. That the attitude and behaviour of Akshay Raina has been inimical with me and my family members. (and more over we are not in talking/visiting terms with Akshay his family).
4. That Akshay has threatened me again today over the issue/s of properties of Delhi/ Jodhpur.
5. That he has also threatened me to dispossess from my house premises at G. Floor at 1016, Sita Ram Bazar, Delhi-110006 & will also throw out my items etc.
6. That most important of all he also threatened me to dispossess me from my house with the help of his in-laws of Lucknow.
7. That today he also abused me badly and he also misbehaved with my father (Sh. S.K. Raina). He shouted at the top of his voice with my father using filthy language.

Neutral Citation Number: 2022/DHC/004736

8. That after this episode I went up and called my father to come down and take a glass of milk before sleep.

9. That Akshay indulged with me in arguments and threatened me to teach a lesson with the help of his In-laws.

10. That Akshay also instigated his In-laws, his wife and his wife's brother (Rajeev) over the telephone his (mobile phone) to make a false complaint against me the undersigned.

11. That Akshay and his In-laws have threatened me to take revenge and they have also threatened me that they shall bear me with dire-consequences.

12. That Akshay also abused and threatened my father over the property matters etc.

13. That I/my family members are completely feeling in-safe, and are also suffering from serious-mental torture / harassment at the hands of Akshay, his (Sangeeta) his mother In-law and Rajeev (Sangeeta's brother) and also I have a genuine fear that they can do physical harm to me/indulge me in false case/s on some wrong pretext in order to send me in jail.

Request: - It is requested that this matter may kindly be looked into seriously and suitable necessary legal action may please be taken so as to ensure the safety of my/our life & property both.

Thanking you.

Yours faithfully,
Sd/-
(Amit Raina)"

Complaint dated 16th April 2014

To

The S.H.O.,
Police Station Hauz Qazi,
Delhi-110006

Sub: Complaint made at (Channel 139) (P.C.R. 100), at about (08 pm today on (Dt: 16/04/2014) by my wife Radha and daughter Rinki against Suraj Mukhi Verma, Sangeeta and Akshay's relatives attacking and beating up my wife (Radha) and my daughter (Rinki) and pushed me (undersigned) and my son badly. threatened us badly and abused due property issues.

Sir,

It is most respectfully submitted to you that my wife & daughter both were attacked by Suraj Mukhi and Sangeeta, over the issues of property & (Suraj Mukhi torn clothes).

That my wife (Radha) who was beaten up by Suraj Mukhi received swelling & pain on her face / head and my daughter (Rinki) who also happen to be present outside my door at my ground floor room received beatings from Suraj Mukhi resulting in swelling of on face and under the eyes of my daughter that Rinki who also requested Suraj Mukhi to move for up-stairs, in order to keep peace but to no purpose.

That we have made requests to Police who have visited my house on my wife and daughters complaint at P.C.R. (100), about the above said mishappening and requested to take then immediate for medical, because of the sustained swellings and pain caused up by beatings by Suraj Mukhi & Sangeeta.

That S.I. Ishwar Singh who had come visited house on the complaint of my wife/ daughter, said that due to night hours we have arrangements and no person to take them to hospital for medical investigation instead Sh. Ishwar Singh also said that we will take my wife(Radha) and daughter (Rinki) for medical tomorrow afternoon and we have taken complaint of my wife/daughter which is sufficient for now for our record.

Request:-

It is therefore requested to do the needful in this matter and my family who is feeling unsafe due to above said persons may please be given protection and the said mishappenining should not be done in future.

Thanking You

Date: 16th April, 2014

Place: Delhi

Yours faithfully

Sd/-

(Amit Raina)

H/o Radha Raina

R/o 1016, Sita Ram Bazar,
Delhi-110006"

18. These complaints again can have no relevance whatsoever to the plea of the petitioner that an oral partition the suit property had taken place in December 2004.

19. The learned ADJ has correctly observed that, the petitioner having pleaded that an oral partition had taken place, the onus to prove the said fact was on the petitioner. Undoubtedly, the petitioner was entitled to place on record, documentary evidence which would support the said stand. That, however, cannot be a justification for the petitioner seeking to place on record documents which have no connection whatsoever with the case, merely rendering the record bulky. Introduction of such irrelevant documents would also, needless to say, impede the progress of the suit.

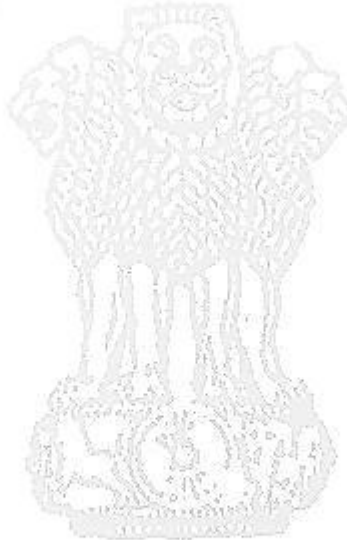
20. Interlocutory orders passed by hierarchically lower judicial authorities, which do not partake of perversity or result in serious and irreparable prejudice to either party, do not invite interference by the writ court under Article 227 of the Constitution of India. I have, nonetheless, deemed it appropriate to examine whether the documents, which the petitioner desired to bring on record, would assist the case set up by the petitioner in the written statement filed by him. As the apology letter dated 19th April 2004 and the complaints dated 4th October 2005, 31st January 2007 and 16th April 2014 that the petitioner sought to place on record do not advance, in any manner of speaking, the case set out by the petitioner in his written statement, I find no infirmity in the decision of the learned ADJ not to allow the said documents to be taken on record. Resultantly, the application of the petitioner for permission to place additional documents on record

Neutral Citation Number: 2022/DHC/004736
is allowed only to extent of the electricity bill dated 6th April 2019.
The decision of the learned ADJ, to the extent it rejects the petitioner's
request for placing the remaining documents on record is upheld.

21. The petition is partly allowed to the aforesaid limited extent
with no orders as to costs.

C.HARI SHANKAR, J

NOVEMBER 9, 2022/ar



नस्यमेव जयते