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

% Judgment delivered on: 06.04.2023

+ CM(M) 546/2023, CM APPL. 16338/2023, CM APPL.
16339/2023

NARESH BANSAL & ANR

..... Petitioner

versus

NITIN BANSAL & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ashutosh Gupta, Advocate

For the Respondent : Mr. Sunil Dalal, Sr. Advocate with Mr.
Sujeet Beniwal, Mr. Hitesh Kumar, Ms.
Manisha Saroha and Mr. Nikhil
Beniwal, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 14.03.2023 passed in CS No. 1078/2022 titled *Naresh Bansal vs. Nitin Bansal*, whereby the objections filed by the petitioners/plaintiffs to the report filed by the Local Commissioner after the preliminary decree of partition having been passed, were dismissed.
2. Learned counsel appearing for the petitioners/plaintiffs submits that the Local Commissioner was given specific directions vide the

order dated 24.01.2023 at page 154 of the present paper book. However, the Local Commissioner has not complied with the specific directions given therein.

3. Learned counsel submits that there was a specific directions that the Local Commissioner prepare a detailed a site plan after examining the subject suit property and then suggest the means of partition by metes and bounds. Learned counsel submits that despite such specific direction, Local Commissioner did not comply with the same and moreover, as per his report, had taken into consideration some site plan handed over by a third party and concluded his report on that basis.

4. Learned counsel submits that the conclusion of the Local Commissioner that as per the said site plan the parties were in separate possession already, is an incorrect observation, for the reasons that the suit for partition was filed precisely to distribute the subject suit property between the parties. On that basis, learned counsel submits that the learned Trial Court could not have dismissed the objections which were valid and such dismissal has caused grave prejudice to the petitioner.

5. *Per Contra*, Mr. Sunil Dalal, learned Senior Counsel appearing for the respondents draws attention of this Court to page 41 of the present petition which is the plaint as filed by the petitioners/plaintiffs, particularly to para no. 12 whereby there is a specific admission that the suit property was already partitioned between the parties.

6. Learned Senior Counsel submits that once having admitted the fact that the suit property was already partitioned between the parties, objecting to the Local Commissioner's report on the basis of site plan

being handed over at site and not carrying out actual measurements despite specific directions, is irrelevant.

7. Learned Senior Counsel also refers to page-122 which is admittedly the site plan of the subject suit property filed by the petitioners/plaintiffs before the learned Trial Court showing the distribution of the property at that relevant point of time. Learned Senior Counsel submits that the said site plan was the one which was handed over to the Local Commissioner and is unequivocally admitted by the respondents/defendants. On that basis, learned Senior Counsel submits that objections appear to be only a method to delay the final decree inasmuch as the respondents/defendants are not in possession and merely to prejudice their case, the petitioners/plaintiffs have filed the said objections, which were rightly dismissed.

8. Learned Senior Counsel refers to page 33 of the impugned order to submit that despite the dismissal of the objections, learned Trial Court has still given the opportunity to the petitioners/plaintiffs to suggest any other method by which the subject suit property could be partitioned. Having given such opportunity, learned senior counsel submits that the petitioners/plaintiffs cannot, for obvious reasons, have any qualms with the learned Trial Court considering the Local Commissioner's report only for the purposes of passing a final decree.

9. Learned Senior Counsel submits that the learned Trial Court had passed the order in accordance with law and there has been no infraction of procedural law or the Trial Court having acted with material irregularity for the petitioners to seek indulgence of this Court.

10. This Court has considered the rival submissions of the parties and

has also perused the documents on record.

11. It is apparent from the perusal of the site plan at page-122 that a wall has been erected distributing the property in two portions. The site plan itself being filed by the petitioners/plaintiffs, there could be no question of doubt being raised by the petitioners/plaintiffs upon the said site plan. The site plan is also admitted by the respondents/defendants.

12. The preliminary decree having been passed by the learned Trial Court, the order appointing the Local Commissioner and directing the said Local Commissioner to suggest ways and methods of partition in the property particularly in the facts obtaining in the present case, cannot be questioned for the reason that the Local Commissioner's report is only to be considered by the learned Trial Court as a suggestion of the various methods partition in the property. That apart, learned Trial Court has also given liberty to the petitioners/plaintiffs to suggest any other method other than the one suggested by the Local Commissioner at the time of passing of final decree.

13. Keeping in view that the said liberty has already been granted, this Court is of the opinion that there is no requirement for this Court to interfere with the impugned order.

14. However, with the consent of the parties, a slight modification of the impugned order may be required so as to enable the smooth partitioning of the properties pending before the learned Trial Court. As the parties agree to the measurements contained in the site plan filed by the petitioners/plaintiffs, placed at page no. 122 as Annexure 'G' of the present petition, the learned Trial Court shall consider the site plan at page no. 122 as a document which ascertains the distribution, leaving

the learned Trial Court to pass a final decree in accordance with law, as also after considering the suggestions, if any, which both the parties may provide to the learned Trial Court.

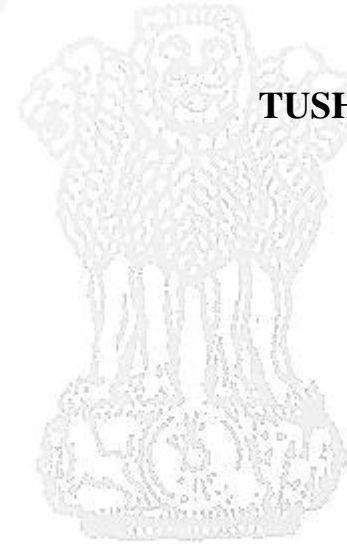
15. The observations of the Local Commissioner with respect to as to which party is in possession of which portion of the suit property, may not be considered by the learned Trial Court and the Trial Court is at liberty to decide the issue in its own wisdom.

16. In view of the aforesaid, the petition and pending applications are disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 6, 2023

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