

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

FAO 370/2019

Reserved on : 07.03.2023

Date of Decision : 01.05.2023

IN THE MATTER OF:

RAJ KUMAR GIRI

..... Appellant

Through: Mr. Rajeev Saxena, Mr. Shrey
Chathly and Mr. Siddhant Luthra, Advocates

Versus

MANOJ KUMAR GIRI & ORS

..... Respondents

Through: Mr. Rohit Choudhary and Ms. Preeti
Kohli, Advocates for respondent No.1
Mr. Dharmendra Kumar, Advocate for
respondents No.2 and 3

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM APPL. 40648/2019 (delay)

1. The present application has been filed under Section 5 of the Limitation Act on behalf of the appellant seeking condonation of delay of 88 days in filing the present appeal.
2. For the reasons stated in the application, the present application is allowed and the delay of 88 days in filing the present appeal is condoned.
3. The application is disposed of.

FAO 370/2019 and CM APPL. 40646/2019 (stay)

1. By way of the present appeal filed under Section 104 read with Order XLIII(R) CPC, 1908, the appellant/defendant no.1 has assailed the order dated 05.03.2019 passed by the Trial Court in CS No. 7134/16 whereby the application under Order XXXIX Rules 1 & 2 CPC filed on behalf of respondents/plaintiffs was allowed and the appellant was directed not to create any third party rights till further orders and also not to disturb the respondent/plaintiff's possession on the portion shown in red colour on the second floor of the suit property.

2. The necessary brief facts are that the respondent No.1 preferred the underlying suit for partition and permanent and mandatory injunction wherein it is claimed that the parties to the suit were real brothers. It is further claimed that appellant was the *Karta* of Hindu Undivided Family (HUF). With the intention that all the siblings could live together under a common roof, a plot measuring 250 square yards bearing No. P-57 (New No.399) was purchased in *Village Chattarpur, Tehsil Hauz Khas, Mehrauli, New Delhi*. It is claimed that the sale consideration amount was paid from the respondent's account while the sale deed was executed in the appellant's name, him being the *Karta* of the HUF. Thereafter, the construction on the said plot was carried out. Subsequently, disputes arose which led to the filing of the suit. The respondent has claimed to be in possession of rooms shown in red colour in the site plan.

3. During the course of proceedings, both the parties claimed to have paid the sale consideration amount. While the appellant has relied on the bank's statement to submit that the amount of Rs.6,00,000/- by way of four transactions was paid by him, the respondent has also made similar

claims. It was further pointed out that while the respondent is occupying portion at the second floor, appellant is occupying the ground floor and one room at second floor. The other respondents being respondent Nos. 2 and 3 are stated to be at first floor, and who have supported the case of the respondent.

4. Learned counsel for the appellant has disputed the submissions made on behalf of the respondent that any HUF was ever created or exists. He submits that the respondent failed to file any documents in support of the said submissions. In this regard, he has also placed reliance on the decision dated 14.02.2023 by a Coordinate Bench of this Court in ARUNA BAKSHI v. DEVENDER KUMAR AND OTHERS passed in **CS(OS) 3443/2015**.

5. A reading of the aforesaid judgment would show that the same was passed considering the preliminary decree of partition. In the present case, the Court is seized only with an application filed under Order XXXIX Rules 1 and 2 where only *prima facie* view of the matter is to be taken and keeping in mind the balance of convenience and if any irreparable loss would be caused in case of denial of interim relief. Pertinently, the interim order was passed by this Court on 21.05.2015 whereby the parties were directed to maintain *status quo* with regard to the title and possession of the suit property. The said order continued till it was confirmed by the impugned order. The parties are admittedly in possession of their respective portions in the suit property. Accordingly, this Court finds no ground to interfere with the impugned order.

6. The appeal is dismissed alongwith pending applications and the impugned order is upheld.

(MANOJ KUMAR OHRI)
JUDGE

MAY 01, 2023

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