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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 340/2019 & CM APPL. 17665/2019

SUGANDHA SETHI

.....Appellant

Through: Ms. Shoba Ramamoorthy and Mr.
Gokula Krisnan, Advocates.

versus

SUDHIR PURI & ANR

.....Respondents

Through: Ms. Puja S., Advocate for R-1.
Mr. Rajiv Bajaj and Ms. Shivani
Bardia, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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15.10.2024

1. The present appeal arises out of a judgment and decree dated 29.01.2018, by which a final decree was passed in a partition suit between the parties.
2. The plaintiff/appellant is the sister of the respondents/defendants. She filed the suit for partition of property bearing No. I-35, *Jangpura Extension, New Delhi* ["suit property"]. A preliminary decree was passed on 30.07.2010, determining the share of each of the parties in the suit property as one- third.
3. The suit property has thereafter been held to not be divisible by metes and bounds, and it has been directed in the impugned judgment that the property be sold by way of public auction.
4. All three parties are represented before me. None of them have challenged the preliminary decree determining the shares of the parties, and the respondents herein have also not challenged the final decree for



sale by public auction.

5. Ms. Shoba Ramamoorthy, learned counsel for the appellant, states that the grievance of the appellant is limited to one aspect, which is a direction that the decree would be treated as an instrument of partition under Section 2(15) of the Indian Stamp Act, 1899 and would be executable only after payment of stamp duty. Ms. Ramamoorthy draws my attention in this connection to paragraph Nos. 5 and 6 of the impugned judgment, which are set out below:

“5 At this stage, counsel for the plaintiff prayed for initiating auction proceedings. As per Section 7 (b) of the Partition Act, the auction proceedings can be conducted in execution only as per the provision of the CPC especially Order 21 which can be done by filing separate execution petition as per law. Accordingly, this final judgment/decreed is passed to the effect that share of the parties stands divided by one third each in respect of suit property and that the suit property is not divisible by metes and bounds despite making efforts. The inter-se sale of the suit property has not been achieved despite making efforts. Final decree be drawn accordingly. This decree be treated as an instrument of partition as defined in Section 2(15) of Indian Stamps Act, 1899 and the valuation for the said purpose be treated as per the latest report of the valuer filed on 05.01.2018.

6. Any of the party is/are at liberty to file execution petition after making payment of requisite court fees, getting registration of partition instrument and after making payment of stamp duty and registration charges, as per law. The expenses for the same shall be equally divided between the parties and adjusted in the sale proceeds accordingly. There is no order as to cost of the present suit. File be consigned to record room. Copy of order be given dasti, if desired.”

6. Having heard learned counsel for the parties, I am of the view that the question raised by Ms. Ramamoorthy is covered against the appellant by a judgment of the Full Bench of this Court dated 11.05.2018 in O. REF. 2/2018 in CS(OS) 1098/2005 [*Indu Singh and Anr. v. Prem Chaudhary and Ors.*].

7. The two questions considered by the Court are recorded in



paragraph 1 of the judgment as follows:

“1. This judgment by the Full Bench is pursuant to a reference by a learned single judge, on two issues:

(i) When an order for sale of the property/properties is passed in a partition suit, whether such an order of sale is a final decree of partition or is just another preliminary decree passed after passing of the earlier preliminary decree declaring the shares of the parties in the property/properties of the partition suit.

(ii) On the answer to the aforesaid issue being given, a further consequential issue will have to be examined that if the order of sale is a final decree, then in such a case whether this final decree will be an “Instrument of Partition” as defined in Section 2(15) of the Indian Stamp Act, 1899 and which “Instrument of Partition” is required to be stamped as per Article 45 of Schedule I of the Stamp Act.”

8. The operative portion of the judgment by a majority of 2:1, is as follows:

“I. An order of sale passed under Section 8 of the Partition Act is a final decree in a partition suit, and all proceedings towards sale of the property which is subject matter of the final decree of partition, have to take place in execution proceedings of this final decree.

II. An order of sale in a partition suit passed under Section 8 of the Partition Act is an instrument of Partition under Section 2(15) of the Stamp Act and requires to be stamped in accordance with Article 45 of the Schedule thereof.

III. The judgments of this Court in the cases of K.N. Khanna 2000 (55) DRJ 544: 2000 (87) DLT 286 (DB) and Sushil Kumar Gupta v. Smt. Prem Gupta and Ors. 2013 (135) DRJ 341 (DB) are hereby overruled.”

9. In view of the aforesaid finding of the Full Bench, the point raised by Ms. Ramamoorthy must be decided against the appellant.

10. The appeal is, therefore, dismissed, leaving the parties to execute the final decree in accordance with law.

PRATEEK JALAN, J

OCTOBER 15, 2024/MR/