



2024 : DHC : 3867-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 355/2024 & CM APPL. 26433-26434/2024****BALBIR SINGH SAINI AND ORS**

..... Appellants

Through: Mr. Ajeesh Kalathil Gopi and Mr.
Vineeth S, Advocates

versus

GANGA DUTT SAINI AND ORS

..... Respondents

Through: None

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Date of Decision: 08th May, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ : (ORAL)****CM APPL. 26434/2024 (for exemption)**

1. Allowed, subject to just exceptions.
2. Accordingly, this application is disposed of.

LPA 355/2024 & CM APPL. 26433/2024

3. Present appeal has been filed impugning the order dated 9th February, 2024, passed in CS (OS) No. 346/2021, whereby the learned Single Judge dismissed I.A. No. 12853/2023, filed by the Appellants herein under Order VII Rule 10 of Code of Civil Procedure, 1908 ('CPC'), seeking return of plaint to the plaintiff and dismissal of the suit on the ground that the market value of the property bearing No. 113, Palam Extension, Main Road, Sector – 7, Dwarka, New Delhi ('suit property') is less than ₹ 2 Crores i.e., the pecuniary jurisdiction of this Court.

4. The Appellants herein are the defendant nos. 1 to 16 respectively, the Respondent Nos. 1 to 4 are the plaintiffs nos. 1 to 4 respectively and Respondent Nos. 5 to 19 are remaining defendants in the suit. The civil suit

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Signed By: MAHIMA
SHARMA
Signing Date: 13.05.2024
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has been filed seeking partition, possession of 1/3rd of share and permanent injunction restraining defendants from selling the suit property and mandatory injunction.

5. It is stated that the suit property was purchased by the grandfather of the parties i.e., late Sh. Ramji Lal, who had three sons i.e., late Sh. Hira Singh, late Sh. Hukam Singh and late Sh. Amar Singh. The Respondent Nos. 1 to 4/plaintiffs are the sons and daughters of late Sh. Hukam Singh, the Appellants herein are the legal heirs of late Sh. Amar Singh and Respondent Nos. 5 to 18 are the legal heirs of late Sh. Hira Singh. It is stated that late Sh. Ramji Lal died intestate on 10th January, 1996, leaving behind the three sons, who all became entitled to 1/3rd share each in the suit property. It is stated that subsequently, late Sh. Hira Singh, late Sh. Hukam Singh and late Sh. Amar Singh also died intestate on 28th April, 1991, 25th January, 1992 and 25th May, 1991, respectively, leaving behind their respective legal heirs who are parties to the suit proceedings and are claiming through the 1/3rd share of their respective predecessor-in-interest.

6. Learned counsel for the Appellants states that the Respondent Nos. 1 to 4 i.e., the plaintiffs, have overvalued the suit property in the plaint and have wrongly stated its current market value at ₹ 5.50 Crores. He states that the said inflated valuation has been carried out so as to bring the Court within the pecuniary jurisdiction of the High Court. He states that the said valuation is without any basis. He states that the Appellants have placed on record the valuation report dated 8th June, 2023, prepared by an approved valuer, which assesses the fair market value of the suit property at ₹ 67,60,681/-. He states that in view of the valuation report, the plaint is liable to be returned to the plaintiff to file before the competent Civil Court.



7. We have heard the learned counsel for the Appellant and perused the record.

8. At the outset we may note that though the present appeal has been filed as a Letters Patent Appeal invoking Clause X of the Letters Patent and Section 10 of the Delhi High Court Act, 1966 ('Act of 1966'), yet the same is an incorrect provision as no Letters Patent Appeal is maintainable against the order passed by the learned Single Judge in exercise of the original civil jurisdiction¹. We shall therefore, treat these proceedings as an appeal under Section 10 of the Delhi High Court Act, 1966, and the Registry is directed to re-number the present proceeding as an FAO (OS).

9. It is well settled that to maintain an appeal under Section 10 of the Act of 1966, the interlocutory order impugned must satisfy the test of 'judgment' as laid down by the Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania*². In the said judgment, the Supreme Court held that for an interlocutory order to be held a 'judgment' it must contain the traits and trapping of finality when the order decided the question in controversy.

10. In the facts of the present case, the objection raised by the Appellants as regards the valuation of the suit property has been specifically left open and kept pending by the learned Single Judge to be decided at trial. Therefore, the impugned interlocutory order does not decide the issue of valuation raised by the Appellants and thus, the impugned order fails to meet the test of 'judgment' required for maintaining the appeal under Section 10 of the Act of 1966.

11. The reliance placed by the Appellants on the valuation report dated 8th

¹ *Jaswinder Singh v. Mrigendra Pritam Vikram Singh Steiner*, 2013 (133) DRJ 1 (FB)

² (1981) 4 SCC 8



June, 2023, has not been admitted by the Respondents and therefore, the same would have to be proved by the Appellants in accordance with law at trial.

12. During the course of arguments, the learned counsel for the Appellant has raised an objection that though the plaintiffs have valued the suit for the purposes of Court fee and jurisdiction at Rs. 5.5 Crores, however, the plaintiff has paid ad-valorem court fee only on the 1/3rd share as claimed by them and this is erroneous.

13. We are unable to accept the aforesaid objection of the Appellants as the payment of ad-valorem Court fee on the value of the share claimed by the Respondent Nos. 1 to 4/plaintiffs in the suit property is in conformity with the law settled by this Court and relied upon by the Appellants himself during the course of arguments (*See: Nisheet Bhalla and Ors. v. Malini Raj Bhalla and Ors.*³). The principles of valuation for the purposes of Court fee and jurisdiction in a suit for partition are well settled and the underlying plaint is in conformity with the same (*See: Sushma Tehlan Dalal vs. Shivraj Singh Tehlan & Ors.*⁴).

14. Accordingly, the present appeal is not maintainable and the same is dismissed along with pending application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 8, 2024/aa

³ 2006 SCC OnLine Del 649

⁴ 2011 (123) DRJ 91 at Paragraph 6