



2024:DHC:6160



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 14th August, 2024***+ **CM(M) 1532/2023 & CM APPL. 48371/2023****ALOK KUMAR**

.....Petitioner

Through: Mr. Vikas Sharma, Advocate.

versus

RAM KUMAR AGGARWAL & ANR.

.....Respondents

Through: Ms. Anjali Sisodia, Advocate for
respondent No.1.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT (oral)**

1. Petitioner is son of defendant No.1 and had moved an application under Order I Rule 10 CPC praying therein for his impleadment.
2. The property in question, which is sought to be partitioned is Flat No.10-A, Supriya Apartments, Paschim Vihar, New Delhi.
3. According to applicant/petitioner, he is the owner of the suit property and is in exclusive and sole possession of the property.
4. It is contended that said flat was, initially, owned by his grandfather, who wished that it should go in the name of his only male grandchild in the family and, therefore, during his lifetime only, he had made the applicant a nominee and his name is registered in the record



of the society as such nominee.

5. It is also contended that the applicant is regularly paying the property tax in respect of the suit property and moreover, such suit property has already been partitioned in the year 2005 and the plaintiffs had received their share of Rs.5 lacs in the suit property.

6. The abovesaid application was opposed by the plaintiff before the learned Trial Court claiming that mere mutation and nomination would not confer any ownership rights in the property in question.

7. There is one important aspect of the case which cannot be sidelined.

8. It is admitted case of the parties that one civil suit bearing Civ DJ No.1821/2008 was filed by the petitioner herein as well as his father seeking relief of declaration of title and injunction with respect to the same flat and against the same respondents/plaintiffs. Unfortunately for the applicant, such suit was dismissed. Such dismissal order has already attained finality as even the appeal filed against such order has been dismissed.

9. Learned counsel for the petitioner, very fairly, admits the aforesaid factual position. However, he supplements that said suit was filed under some mistaken advice and was not required to be filed at all.

10. Be that as it may, since the issue of ownership with respect to the flat in question has already attained finality against the petitioner herein, in view of the abovesaid peculiar position, there is no



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requirement of impleading the petitioner as one of the defendants, more so, when his father is defending the suit, earnestly. Moreover, on one hand, the petitioner contends that the property in question was not subject to partition, on the other, he himself admitted that said property was partitioned in the year 2005. Thus, the petitioner is blowing hot and cold.

11. Finding no merit or substance in the present petition, the petition is dismissed.

12. Before parting, this Court would wish to clarify that it will be still open to the plaintiff to prove before the learned Trial Court that the property in question is liable to be partitioned.

(MANOJ JAIN)
JUDGE

AUGUST 14, 2024
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