

In The Court of Sh. Sanatan Prasad,
Additional District Judge-02, (East),
Karkardooma Courts, Delhi.

CS No. 1443/2016
CNR No. DLET01-001270-2012

In the matter of :-

Smt. Rekha @ Rakhi
W/o Sh. Chetan Sharma,
D/o Sh. Jeevan Lal,
R/o House No. 1/3043,
Ram Nagar Extension, Delhi.

.....Plaintiff

Versus

1. Sh. Khushal S/o Sh. Jeevan Lal,
2. Smt. Savita W/o Sh. Khushal,

Both R/o H.No. 169, Gali No.5,
Sarpanch Ka Bada, Mandawali Fazalpur,
Delhi-110092.

3. Smt. Madhu Bala W/o Sh. Ravinder Kumar,
R/o House No. 30-B, Railway Colony,
Jagadhri, Haryana-135002.

4. Sh. Devender Kumar S/o Sh. Jeevan Lal
R/o B-36, Sukar Bazar, Mubarakpur,
Delhi-110081.

5. The M.C.D.

Through Its concerned Officials,
Civic Centre, SKD Basti, Press Enclave,
Ajmeri Gate, Minto Road, New Delhi-110002.

6. Sh. Jeevan Lal

R/o H.No. 169, Street No.5,
Sarpanch Ka Bada, Fazalpur,
Delhi-110092

.....Defendants

Date of Institution	:	31.05.2012
Date of Reserving Order	:	01.11.2023
Date of Decision	:	01.11.2023

**Suit for Permanent and Mandatory Injunction, Possession
and Declaration for Partition.**

Present : Sh. Kuldeep Sharma, Ld. Counsel for plaintiff.
Sh. Kumar Gaurav, Ld. Counsel for the defendants
No.1 and 2.
Defendants No.3 and 4 are ex-parte.
Sh. H. Kaushal, Ld. Counsel for the defendant
No.5/MCD.
None for the defendant No.6.

JUDGMENT

1. Brief facts, of the case, as averred by the plaintiff, relevant, for the disposal, of the present suit, are that mother of the plaintiff as well as of the defendants No.1, 3 and 4,

Smt. Shakuntala Devi, was the absolute owner of property bearing No. 169, Gali No.5, Sarpanch Ka Bada, Mandawali, Fazalpur, Delhi-110092, having area ad-measuring about 100 sq. yards, (hereinafter referred to as the suit property). Smt. Shakuntala Devi, expired leaving behind, Smt. Rekha @ Rakhi (plaintiff), Sh. Khusal (defendant No.1), Smt. Madhu Bala (defendant No.3) and Sh. Devender Kumar (defendant No.4) as the legal heirs. It is, further, averred by the plaintiff that being one of the LRs of her monther, she became the absolute owner of 25 Sq. Yards portion of the suit property by virtue of her $\frac{1}{4}^{\text{th}}$ share in the suit property. Thus, other LRs of Smt. Shakuntala Devi had also become owners of their respective portions, i.e., $\frac{1}{4}^{\text{th}}$ each. However, no written partition ever took place between the plaintiff and the other legal heirs of late Smt. Shakuntala Devi, yet, even then they were occupying their respective shares in the suit property peacefully.

2. It is, further, averred by the plaintiff that the defendants No.1 and 2 showed their requirement for the portion of plaintiff for residential purpose and stated to plaintiff that if the plaintiff permits them to use the same, then it would be convenient for them and they assured that whenever plaintiff

would ask them to vacate the same, they, without delay, would do the same. Thus, the plaintiff agreed for the same and gave her portion, i.e., 25 sq. yards to the defendants No.1 and 2 and also executed a GPA in favour of the defendant No.1 only for the residential purpose without any consideration. It is, also, averred that the defendant No.1 also executed an affidavit with undertaking that whenever the plaintiff would ask him to vacate the same, he would, without delay, would handover the peaceful and vacant possession of the share of the plaintiff. It is, further, averred by the plaintiff that after some time, the plaintiff came to know from some reliable sources that the defendants No.1 and 2 are trying to sell the portion of plaintiff without her consent and without providing for her legitimate right in the same. Therefore, the plaintiff approached the office of Sub-Registrar-IV and got cancelled her GPA, on 27.09.2003. It is, also, averred by the plaintiff that after cancellation of GPA, the plaintiff was under apprehension that the defendants No.1 and 2 may cause any kind of loss to her, hence, plaintiff started residing in her share of the suit property, but again shifted to Ram Nagar address on 18.02.2010, but this time, she put her locks over the premises being occupied by her.

3. It is, further, averred by the plaintiff that she again came to know that the defendants No.1 and 2 are trying to carry on some illegal construction over her share in the suit property, and thus, the plaintiff reached to the SHO, PS Mandawali, and made written complaint, dated 12.11.2011, vide DD No. 41-B, and reference was also made by the SHO to the officials of the defendant No.5 in this regard, vide diary No. 820-24, dated 19.12.2011, upon which the defendants No.1 and 2 were directed not to raise any illegal construction over the share of the plaintiff in the suit property. It is, further, averred by the plaintiff that that despite directions, the defendants no.1 and 2 did not stop their illegal activities of raising illegal construction over the share of the plaintiff in the suit premises, and thus, made complaint, dated 23.05.2013 to the DCP, East District, Delhi, with copy to D.C. (MCD), Building Department, (S), Zone. Hence, the present suit.

4. Summons of the suit were duly served upon the defendants. Defendants No.1 and 2 filed their written statement, while, the defendants No.3 & 4 were proceeded with ex-parte, vide order, dated 21.01.2013, by the Ld. Predecessor of this Court. Thereafter, Ld. Counsel for the

plaintiff filed an application under Order I, Rule 10, CPC R/WS 151, CPC for impleading Sh. Jeevan Lal as defendant No.6 and also an application under Order VI, Rule 17 CPC for amendment in the plaint. Ld. Predecessor of this Court, vide order, dated 09.05.2016 allowed the application under Order I, Rule 10, CPC and impleaded Sh. Jeevan Lal as defendant No.6. Further, the application under Order VI, Rule 17, CPC, was also allowed by the Ld. Predecessor of this Court, vide order, dated 15.07.2017, and amended memo of parties was also filed in the case. Defendant No.5 had also filed its written statement.

5. In the written statements, to the amended plaint, filed by the defendants No.1 and 2, they took preliminary objections that the suit of the plaintiff is not maintainable and liable to be dismissed under Order VII, Rule 11, CPC, besides, the suit of the plaintiff is under valued and no proper court fees has been affixed. They denied all the averments made by the plaintiff in her plaint. Further, the defendant No.5 in its written statement took preliminary objection that present suit is not maintainable as the plaintiff has not served the statutory notice under Section 477/478 of the DMC, Act prior to filing of the present suit. Defendant No.5 had also denied

all the averments made by the plaintiff in his plaint. However, defendant No.5 has, clearly, stated that aforesaid unauthorized construction has been booked, vide file No. 532/B/UC/SH/S/13, dated 17.01.013, and the show-cause notice, dated 21.01.2013 was issued upon the owner/occupier of the suit property and thereafter, on 13.02.2013, demolition order was passed against the suit property. Consequently, the defendants seek dismissal of the present suit.

6. The plaintiff filed replication to the written statement of the defendants No.1 & 2 and reiterated averments made by her in the plaint.
7. On the basis of pleadings of the parties, Ld. Predecessor of this Court, vide order, dated 21.05.2013, had framed the following issues :-
 - (1) Whether the suit filed by the plaintiff is not maintainable and without any cause of action? OPD-1 & 2.
 - (2) Whether the proper court fee has not been affixed by the plaintiff? OPD1 & 2.
 - (3) Whether the suit is bad for non-joinder of necessary parties? OPD1 & 2.
 - (4) Whether the plaintiff has no locus-standi to file present suit? OPD1 & 2.

(5) Whether the plaintiff is entitled to decree of permanent injunction in her favour against the defendants No.1 and 4, thereby, restraining the defendants, their legal heirs, successors, representatives etc from selling, alienating, parting raising any illegal and unauthorized construction and creating any third party in the suit property bearing No. 169, Gali No.5, Sarpanch Ka Bada, Mandawali, Fazalpur, Delhi-110092 as prayed for? OPP.

(6) Whether the plaintiff is entitled to decree of mandatory injunction as prayed for? OPP.

(7) Whether the plaintiff is entitled to decree of possession in her favour against the defendant No.1 and 2 regarding the suit property as prayed for? OPP.

(8) Whether the plaintiff is entitled to decree of partition in her favour and against the defendants No.1 to 4 regarding the suit property as prayed for? OPP.

(9) Relief.

8. However, these issues were re-cast and thereafter, Ld. Predecessor of this Court vide order dated 31.10.2018 had also framed following issues:-

(1) Whether the plaintiff is entitled to the relief of permanent injunction as prayed? OPP.

(2) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed? OPP.

(3) Whether the plaintiff is entitled to the relief of possession as prayed? OPP.

(4) Whether the plaintiff is entitled to the relief of declaration as prayed? OPP.

(5) Whether the plaintiff has not valued the present suit property for the purpose of court fees? OPD No.1 and 2.

(6) Whether the present suit is bad for non-joinder of necessary party? OPD No.1 and 2.

(7) Whether the present suit is bad for want of service of notice under Section 477/478 of DMC Act? OPD No.5.

(8) Relief.

It appears that the issues framed at both the occasions were framed consciously, by the Court also being mindful of the fact that even prior to re-casting the issues, on 31.10.2018, the Court had earlier, on 21.05.2013, had also framed the issues in the matter. As both the sets of issues, mentioned, as above, being in para-materia terms, their effects must be construed together and having done so, it appears that only the issue No.7, framed at the second instance is adding to a new point for adjudication, but the same is, purely, a legal issue, and as such, there is no harm, if

the Court, while adjudicating the present matter, takes up the issues framed at the second instance only, inasmuch as, I am fully convinced that parties were all along aware of these happenings taking place on account of addition of defendant No.6 in the suit and also amendment made to the plaint and further in the written statement, filed to the amended plaint and again, the respective burden/(s), of proof, placed upon them and therefore, there is no likelihood of any miscarriage of justice, occurring to any of the parties and as such the Court intends to further dwell upon the matter, accordingly.

9. Plaintiff, Smt. Rekha @ Rakhi, examined herself, on 28.10.2013, as PW1 and tendered her evidence by way of affidavit, Ex.PW1/A and also relied upon the documents Ex.PW1/1 to PW1/3 and documents Mark A to E. In her cross-examination, conducted on 03.09.2014, by Ld. Counsel for the defendants No.1 and 2, this witness deposed that she did not have the documents of the suit property, and all the documents are in possession of the defendant No.1, her brother. She also did not have the idea as to what was the value of the suit property when she filed the present suit. She denied the suggestion as wrong that document, Mark A, (now exhibited as Ex.PW1/5 colly), i.e., GPA, agreement to Gift

and Will were executed after receiving a sum of Rs.1.5 Lakhs from the defendant No.1. She also deposed that she did not know, if the defendant No.4 relinquished his right, in the suit property, in favour of the defendant no.1, for a sum of Rs.1.5 Lakhs. She also deposed that she is not aware about whereabouts of her father for last 15-20 years, Sh. Jeevan Lal, though alive, and again said that she was not aware, whether alive or not, and denied the suggestion as wrong that she has visiting terms with her father. She also deposed that she did not have any documentary evidence to prove that she was in possession of any part of the suit property after her marriage, and further, denied the suggestion as wrong that she had never been in possession of any part of the suit property after her marriage, i.e., in the year 2001. She further denied the suggestions as wrong that after execution of document, Ex.PW1/5 (colly), in favour of the defendant no.1, she visited the suit property and picked up quarrel with the defendant No.1 on account of demand of more money or that the defendant No.1 had given a sum of Rs.3 Lakhs at the very moment by borrowing the same from his father-in-law or that after some months, again, she visited the suit property with demand of Rs. 3 lakhs again, if the defendant No.1 wanted cash receipt of earlier payment on the document Ex.PW1/2.

She has denied the suggestion that the same was false or fabricated. She, however, volunteered to say that her mother had executed 'Will' in favour of defendants No.1, 3 and 4 and plaintiff/herself. She further deposed that she came to know about the said Will prior to her marriage, but cannot tell the exact date. She did not know whether the same was registered or not or was notarized. She also could not tell the names of the attesting witnesses to the said Will. However, she denied the suggestion as wrong that her mother had [*not (sic)*] executed any 'Will' ever.

10. Thereafter, on 13.02.2019, plaintiff again filed her evidence by way of affidavit, exhibited as Ex.PW1/1, upon arraying of Sh. Jeevan Lal as one of the defendants, as allowed by Ld. Predecessor of this Court, vide order, dated 09.05.2016 and also upon amendment of plaint, as allowed by Ld. Predecessor of this Court, vide order, dated 15.07.2017. Thus, the plaintiff tendered another affidavit of evidence exhibited as Ex.PW1/1, and relied upon the documents mentioned below :-

- (1) Photocopy of voter-ID card marked as Mark A.
- (2) Site plan as Ex.PW1/3.
- (3) Photocopy of GPA, dated 16.06.2003, marked as

Mark B.

(4) Photocopy of undertaking letter of the defendant No.1 as Ex.PW1/5 (OSR).

(5) Photocopy of certified copy of cancellation of GPA, dated 16.06.2003, as Ex.PW1/6.

(6) Photocopy of complaint, dated 12.11.2011 as Ex.PW1/7.

(7) Photocopy of complaint, dated 23.05.2012, made to DCP, East District, as Ex.PW1/8 (OSR).

(8) Photocopy of complaint, dated 23.05.2012, made to EDMC, as Ex.PW1/9 (OSR).

(9) Photocopy of complaint, dated 25.05.2012, made to SDM, Mandawali, as Ex.PW1/10 (OSR).

11. In her further cross-examination, by the Ld. Counsel for the defendant No.5/MCD, PW1/Smt. Rekha deposed that prior to filing of the present suit, she sent a statutory notice to the defendant No.5/MCD. However, she deposed that she cannot tell the name of the persons, who received the complaint, Ex.PW1/9, and stamps appearing, of receipts for different dates, i.e., 25.05.2012, 29.05.2012, 29.05.2012, and 14th June, (year not mentioned), at points A, B, C and D. She, further, admitted that she has no claim regarding share in the

suit property against the defendant No.5/MCD, and also deposed that she did not file any document to show that there is sanction plan of the suit property from the defendant No.5, and never made any application with the defendant No.5 in order to get the property sanctioned as per rules as well as in respect of its mutation in her name in house tax records. She also admitted that the document, i.e., site plan Ex.PW1/3 did not bear her signatures and also she could not tell since when she was residing in the suit property. When this witness was also cross-examined on this affidavit by the Ld. Counsel for the defendants No.1 & 2, plaintiff/PW1 denied the suggestion as wrong that she had not impleaded her father as a party in the instant suit at the time of its institution as she wanted to grab his share in the suit property. However, she admitted that when objection as to non-impleadment of her father was raised, she had traced his residential address. Her, further cross-examination, however, was deferred, and as such her cross-examination could not be concluded on behalf of the defendants No.1 and 2. However, this Court, vide order, dated 14.09.2022 closed the PE as the counsel for the plaintiff stated that the plaintiff would like to close her evidence in the matter, nor any other PW was present on the said date, except the PW1, consequently, discharging her

without further cross-examination. Thereafter, vide order, dated 22.02.2023, this Court had also closed the DE as the defendants No.1 and 2 had not placed on record the receipt of deposit of cost of Rs.500/-, which was imposed vide order, dated 30.11.2022, as the opportunity for leading DE. Thus, the matter was listed for final arguments.

12. I have heard ld. counsel for the plaintiff and perused the material available on record, and also written arguments filed by the plaintiff.

13. Ld. Counsel for the plaintiff has reiterated all the averments made by the plaintiff in her plaint, while filing written arguments in the matter. He further submitted that Smt. Shakuntala Devi, mother of the plaintiff as well as of the defendants No.1, 3 and 4 was the absolute owner of the property bearing No. 169, Gali No.5, Sarpanch Ka Bada, Mandawali, Fazalpur, Delhi-110092, having area ad-measuring about 100 sq. yards, which is, more specifically, shown in Green colour in the site plan Ex.PW1/3. It is, further, argued that the plaintiff became one of the LRs of her mother as per the Succession Act, and also became the absolute owner of 20 sq. yards portion of the suit property by

virtue of her 1/5th share in the property, and other LR's of late Smt. Shakuntala Devi had also become the owners of their respective portions, i.e., 1/5th share. It is, further, argued by the Ld. Counsel that in order to grab the share of the plaintiff in the suit property, the defendants No.1 and 2 are adopting illegal way to usurp the share of plaintiff, and are now, willing to dispose off the portion of the plaintiff in the suit property to some other person. Hence, plaintiff is entitled for permanent & mandatory injunction, possession and declaration for partition.

14. It appears that Issues No.1, 3 & 4 are inter-connected and, therefore, they have to be taken together for adjudication as the common questions of law and facts would be addressed upon and will require common discussion, accordingly.

Findings on the Issues No.1, 3 & 4.

15. Issues No.1, 3 and 4, are to the effect of relief of permanent injunction, mandatory injunction, possession and declaration, respectively, and onus to prove the same is upon the plaintiff. In the instant case, plaintiff claims possession of 1/5th share of the suit property, i.e., bearing No. 169, Gali No.5, Sarpanch Ka Bada, Mandawali, Fazalpur, Delhi-

110092, having area admeasuring about 100 sq. yards as the same was left behind by Smt. Shankuntala Devi, her mother leaving behind the plaintiff as well as the defendants No.1, 3, 4 and 6 as the legal heirs. The said fact has been admitted by the defendants No.1 and 2 in their written statement. However, the defendants No.1 and 2, merely, asserted that plaintiff has no locus standi to file the present suit, that, too, on the basis of agreement of gift, GPA, deed of will regarding her share, transferred by the plaintiff in their name. Furthermore, it is a settled proposition of law that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. The transactions of the nature of “SA/GPA/Will on Agreement to Gift transfers” do not convey title and do not amount to transfer, nor can they be recognized as valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of the T.P. Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. Therefore, the defendants No.1 and 2 cannot be said to be the absolute/legal

owner of the suit property as mentioned above, in view of the aforesaid settled proposition of law qua the “GPA/SA/Will on Agreement to Gift transfers”. Consequently, the defendant No.1 and 2 cannot claim their right over the 1/5th share of the plaintiff on the suit property, merely, on the fact that plaintiff had executed GPA, dated 16.06.2003 marked as, Mark A. Further, the said GPA has been, duly, got cancelled by the plaintiff, vide Ex.PW1/2, later on exhibited as Ex.PW1/6.

16. So far as the agreement of gift deed is concerned, no evidence has been led in the matter, either by the plaintiff or by the defendants in this regard to show the exact nature of the document and whether the requisite stamp duty has been paid thereupon. Keeping in view the legal position that a deed of gift has to be a deed as such and therefore, the documents in nature of agreement to gift cannot constitute any valid gift at all, and as such of no legal consequences, flowing therefrom, in this regard.

17. Ld. Counsel for the plaintiff has submitted in his written arguments that present suit has been filed by the plaintiff on the basis of her share in the suit property, being one of the LRs of her deceased mother Smt. Shakuntala Devi, who was

the absolute owner of the property in question, as shown in green colour in the site plan, i.e., Ex.PW1/3 and this is an admitted fact by the defendants No.1 and 2 and there appears to be no denial or any written statement, filed on behalf of the defendants No.3, 4 and 6. It is also an admitted fact that the plaintiff is the daughter of late Smt. Shakuntala Devi, and thus, a class-I heir, to the deceased Smt. Shakuntala Devi, whose estate devolved upon the all class-I heirs to the deceased through the law of succession, as determined under the provisions of the Hindu Succession Act, 1956, and it is also established fact by now that the parties to the suit, except the defendant No.5, are Hindu, further, this Court is of the view that since no substantial question of law, relating to the better title and right of the plaintiff, is involved in the matter, therefore, her right to claim partition/declaration and consequently, possession from the defendants No.1 and 2 and permanent injunction accrues on succession, therefore, the plaintiff is entitled to partition/declaration qua her 1/5th share to the property put under partition, in the present suit. Accordingly, the issues No.1, 3 & 4 are decided in favour of the plaintiff and against the defendants.

Findings on the Issue No.2:-

18. This issue is with regard to the plaintiff's entitlement to the relief of mandatory injunction as prayed and prayer relates with respect to the defendant No.5 for not to create any title document and also demolition of the complete illegal construction on the property, in question. There was, an issue No.3, earlier framed, on 21.05.2013 with regard to the suit being bad for non-joinder of necessary parties, and notably, defendant No.6 came into the picture in this backdrop. The burden of proof of proving the Issue No.2, framed on 31.10.2018, is on the plaintiff. Sh. H. Kaushal, Ld. Counsel for the defendant No.5/MCD has submitted that no relief has been claimed against MCD/defendant No.5, however, in the written statement, of this defendant a plea has been taken on the ground of no cause of action against this defendant and further the property in question being booked on the complaint, vide file No. 532/B/UC/SH/S/13, dated 17.01.2013 and further action was awaited on response to the notice, issued to the 'Occupier' of the building. I have carefully considered the 'realm' of this issue, consequential relief thereupon and also the provisions of Order II, Rule 3, CPC and it appears that the rules provides liberty to a plaintiff for uniting in the same suit several causes of action against the same defendant or the same defendants jointly;

and any plaintiffs having cause of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit, if not provided otherwise. Obviously, and admittedly, the plaintiff and defendants No.1 & 2 are in opposite directions. Plaintiff seeks partition, at least defendants No.1 and 2 are not interested in this relief. Defendants No.3 and 4 are ex-parte. Defendant No.5 is altogether independent entity having no interest in the subject matter of the suit, except to act lawfully in general and also, otherwise, to abide by the orders passed by this Court. Defendant No.6, added later on, has not contested the suit, therefore, the provisions of Order II, Rule 3, CPC become applicable and the joinder of cause of mandatory injunction is, clearly, non-available with the other reliefs, claimed in the present suit, which is one for partition/declaration/possession/restraint etc., the grant of which are contingent upon the adjudication to be made by this Court, and unless the property in question, is partitioned by metes and bounds no specific portion can be ascribed to the parties to the suit, except the defendants No.2 & 5. Even such joinder has also resulted in hampering of the proceedings and delivery of judgement in the matter and this issue is, of-course, a matter

of embarrassment to this Court. Accordingly, this issue is not triable while trying other issues in the matter. I have also considered the possible likelihood of miscarriage of justice occurring to the plaintiff, if the issue is being struck off, but I am fully convinced that the parties were altogether alive to the issues framed in the matter, whether earlier or later, and they have led their evidences, accordingly, thereupon, in terms of burden of proof, specifically placed on them, and as such, I, hereby, strike off the issue No.2 in the matter, however, there is no need to release the defendant No.5 from the array of the suit as it has acquiesced to the jurisdiction of this Court and it has not taken any plea in its written statement for its mis-joinder in the matter, thus, there is no need to impart any findings on this issue which stands struck off, resultantly, now, there would be as many as seven issues only, remaining in the case and the issue No.7 will be of relief and accordingly, the rest of the issues stand re-numbered, therefore, the issues No.5 to 7 would be re-numbered as Issues No.4 to 6 and issues No.1, 3, 2 & 4 as issues No.1, 2 & 3 accordingly.

Findings on the Issue No.4.

19. This is the issue, to the effect, as to “whether the plaintiff has not valued the present suit properly for the purpose of court fees” and onus to prove the same is upon the defendants No.1 and 2. I have gone through the paragraph No.15 of the plaint and also the Court fees affixed, of Rs.10,500/- in total, on the plaint and I am satisfied that the plaintiff has valued her suit reasonably and properly and so far as the valuation of the present suit for the purpose of court fees is concerned, this Court is of the view that the present suit is in effect one for partition, possession, mandatory and permanent injunctions as well as for declaration, for which the plaintiff has already, paid requisite court fees in this regard. Hence, issue qua valuation of the suit for the purpose of court fees is decided in favour of the plaintiff and against the defendant.

Findings on the Issues No.5.

20. This is an issue, to the effect, “Whether the present suit is bad for non-joinder of necessary party?” and onus to prove the same lies upon the defendants No.1 and 2. However, in this regard, no cogent evidence has been led by the defendants No.1 and 2 to show as to how the present suit is bad for non-joinder of necessary party or otherwise shown it

bad on this account. Consequently, this issue is decided in favour of the plaintiff and against the defendants No.1 and 2.

Findings on the Issue No.6.

21. This is an issue, to the effect, “whether the present suit is bad for want of service of notice under Section 477/478 of DMC Act?”, and onus to prove the same lies upon the defendant No.5/MCD. As regards this issue, this Court has, already, held, while dwelling on the issue No.2, that the defendant No.5 is altogether an independent entity having no interest in the subject matter of the suit, except to act lawfully in general and also, otherwise, to abide by the orders passed by this Court. Further, the property in question, already, being booked on the complaint, vide file No. 532/B/UC/SH/S/13, dated 17.01.2013 and further action was awaited on response to the notice, issued to the ‘Occupier’ of the building. Consequently, no specific finding is warranted on this issue, except to say that the obligations to check the menace of illegal/unauthorized construction is a continuous and constant one on the agencies/MCD with promptitude and alacrity, in this regard and even in the present case, if necessitated, in accordance with law.

Issue No.7 Relief:-

22. In view of the aforesaid discussion, the suit is decreed in terms of relief of possession, permanent injunction, also in view of the cancellation of Ex.PW1/6, qua declaration of GPA, dated 16.06.2003, as null and void. The parties, except the defendants No. 2 & 5, are held entitled to 1/5th share, each, in the suit property, i.e., bearing No. 169, Gali No.5, Sarpanch Ka Bada, Mandawali, Fazalpur, Delhi-110092, more specifically shown in red colour, in the site plan Ex.PW1/3, to the plaintiff. Further, the parties, except the defendants No. 2 & 5 shall maintain status quo and also shall not create any third party interest in the same, besides, they will also not raise any construction in the suit property till the property is partitioned by metes and bounds with no order as to costs. Preliminary decree be prepared, accordingly.
23. To come up on 06.03.2024 for partition by metes and bounds. Parties to take appropriate steps. Deficient court fees, if any, be furnished.

Announced in the open
Court on 01.11.2023

(Sanatan Prasad)
Additional District Judge-02
(East)/KKD/Delhi.