

IN THE COURT OF SH KISHOR KUMAR,
DISTRICT JUDGE-04,
NORTH DISTRICT : ROHINI COURTS : DELHI

CS DJ No.58333/2016
CNR no. DLNT01-000295-2011

Smt Susheela Devi @ Sheela Devi
W/o Late Sh Raj Singh

Master Pradeep Kumar
S/o Late Sh. Raj Singh

Smt Geeta
w/o late Sh Devinder Singh

Smt Rani
w/o Sh Yoginder

All R/o H.No.1, Panaudyan
Narela Delhi 110040.

(Plaintiff no.2 is a minor aged 15 and the suit
is filed on his behalf through plaintiff no.1
being his mother and natural guardian)

.....Plaintiffs

VERSUS

Smt Asha
w/o Late Sh Kuldeep Singh
R/o H No. 1, Panaudyan Narela Delhi 110040.

Baby Nancy
d/o Late Sh Kuldeep Singh
R/o H No. 1, Panaudyan Narela Delhi 110040.

.....Defendants

Date of Institution : **03.06.2011**
Date of Order : **17.05.2024**
Final Order : **Preliminary
decreed**

JUDGMENT ON PRELIMINARY DECREE OF PARTITION

1. The plaintiff has filed the present suit for partition and permanent injunction.

2. The facts in narrow compass are that the plaintiffs and defendants are co-owners of the property bearing no. H No. 1, Panaudyar Narela Delhi 110040 measuring 163.20 sq yards consisting of ground floor with 6 shops and first floor with rooms (hereinafter be referred to as suit property) inherited from Sh Raj Singh, husband of plaintiff no.1 and father of defendants no.2 to 4, father in law and grand father of defendants no.1 and 2, respectively. After the demise of Sh Kuldeep Singh, husband of defendant no.1, defendant no.1 with her daughter left the matrimonial house to live with her parents. A complaint under DV Act was also filed by defendant no.1 in the year 2009 against plaintiffs no.1, 3 and 4 where the court of Ld MM vide its order dated 21.05.2009, restrained the plaintiffs no.1, 3 and 4 from causing interference to the entry of defendant no.1 in the portion of the suit property where she was earlier residing. Despite the fact that plaintiffs and defendants are co-owners of the suit property, the defendant no.1 started the quarrel asserting herself to be absolute owner of the entire suit property.

3. It is further averred that late husband of defendant no.1 and plaintiff no.1 have sold a shop at the ground floor of the suit property measuring 55 sq yards to Sh Ramesh Kumar for Rs.429000/- which was entirely kept by late husband of defendant no.1 and after his demise, defendant no.1 has refused to pay share out the said amount amongst plaintiffs no.1 and 3. Further, defendant no.1, is asserting herself to be absolute owner of the suit property, started negotiating with buyers for sale of the entire suit property. Despite several requests by the plaintiffs to partition the suit property, defendant no.1 refused to do so and instead threatened the plaintiffs of dire consequences in case they do not vacate the suit property. Hence the present suit for partition and permanent injunction has been filed by the plaintiffs to partition the suit property by metes and bounds and to put the plaintiffs in possession in respect of their respective shares.

4. Written statement has been filed by the defendants wherein it is stated that one shop at the ground floor is in possession of Sh Ramesh Kumar against whom plaintiffs have filed a suit for eviction which is pending adjudication. One other shop was also sold by Sh Raj Singh to some other person during his lifetime. It is further submitted that when plaintiffs tried to dispossess defendant no.1 from the suit property, she filed complaint against plaintiffs. The amount of sale consideration received from shop on the ground floor was equally distributed among the parties. The plaintiffs never approached the defendant no.1 for partition of the suit property. All

other averments made in the plaint were denied being wrong and incorrect.

5. By way of present application u/o XII Rule 6 CPC, defendants are seeking partition of the suit property between the parties to the suit in 1/5th equal portion. It is submitted in the application that plaintiffs, in their plaint, have admitted the defendants to be co-owners of the suit property and have entitlement of 1/5th share in the same. It is prayed that in view of the admission and willingness of the plaintiffs, the present application may kindly be allowed and suit property may be partitioned by metes and bounds.

6. Reply to the present application has been filed by the plaintiffs submitting therein that plaintiffs are ready and willing to give the defendants 1/5th share on the first floor of the suit property and at ground floor, defendants are entitled to area measuring 2.75 sq yards (remained after selling the shop at the ground floor by plaintiffs and husband of defendant no.1). It is further submitted that without demarcating the suit property, the suit property cannot be partitioned. It is further submitted that present application to partition the suit property by metes and bounds is not feasible and may not be allowed. It is prayed that present application may kindly be dismissed with costs.

7. After perusal of the plaint as well as written statement filed on

behalf of the defendants, it is seen that there is no defence taken by defendants in the written statement that plaintiffs are not entitled to partition. Both the parties are agreeing to 1/5th share entitlement for each parties. Thus, it is a fit case to pass a preliminary decree of partition in view of admitted pleadings of the parties qua each other.

8. Therefore, a preliminary decree of partition is passed in respect of the suit property i.e. R/o H No. 1, Panaudyann Narela Delhi, 110040, holding that parties to the suit are entitled to 1/5th share in the suit property, as per the site plan attached with the plaint filed on 03.06.2011.

9. **Decree sheet be prepared accordingly.**

**ANNOUNCED IN THE OPEN COURT,
On 17th May, 2024.**

**(Kishor Kumar)
DJ-04, North, District,
Rohini Courts , Delhi**