

Dated: 29.11.2019

New CS No.58092/16
Old CS No. 480/13

IN THE MATTER OF :-

- 1. Sh. Ganga Prasad
S/o Late Sh. Budh Ram**
- 2. Ms. Kanti**
- 3. Ms. Malti**
- 4. Ms. Kavita
Plaintiff no.2 to 4
D/o of Sh. Ganga Prasad**
- 5. Master Kamal Gupta
A minor through his natural guardian
and next friend Sh. Ganga Prasad
All R/o.H.No.A-82,
Kewal Park Extn.
Delhi-110033.**

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Versus

**Sh. Dinesh Kumar
S/o Sh. I.P.Gupta
R/o. H.No.A-14,
Bhagat Singh Marg,
Kewal Park, Delhi-110033**

... Defendant

**Date of institution of Suit : 11.11.2013
Date of conclusion of
arguments : 28.11.2019
Date of judgment : 29.11.2019**

JUDGMENT

1. Present suit is for partition filed by the husband and children of late Smt. Prabhawati against the defendant seeking partition of property bearing house no. A-14, Bhagat Singh Marg, Kewal Park, Delhi-110033 which as per the plaintiffs was jointly purchased by late Smt. Prabhawati and defendant on 26.08.2005 (hereinafter referred as suit property) specifically shown red in colour in the site plan.

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PLAINT

2. It is stated that the suit property was constructed and maintained by the plaintiff no.1 from their joint funds and they are in joint possession of the same. Smt. Prabhawati expired on 31.08.2011 leaving behind plaintiffs as her legal heirs and after her death, they are the co-owners and in co-possession of the 50% share in the suit property. That the plaintiffs have been desirous of separation of their one half share by metes and bounds and have been requesting the defendant for the same but the defendant is not agreeing for the partition, hence, the present suit.

2.1 It is prayed that preliminary decree of partition be passed in favour of plaintiffs ascertaining their one half share i.e. 50% share in the suit property by metes and bounds followed by the final decree alongwith the cost of the suit.

WRITTEN STATEMENT ON BEHALF OF DEFENDANT

3. In the WS filed on behalf of the defendant, the defendant has taken the preliminary objection that the plaintiffs have no locus-standi to file the present suit. It is denied that on 26.03.2005, the suit property was jointly purchased by the defendant along-with the wife of plaintiff no.1. It is stated that the plaintiffs and late Smt. Prabhawati had only contributed Rs.3 lacs towards the purchase of the suit property and the remaining amount of Rs. 8 lacs was paid by the defendant. Even the entire construction cost was paid by the defendant.

3.1 That Late Smt. Prabhawati was diagnosed with cancer and plaintiff no.1 took more than Rs.5 lacs from defendant and his son for the treatment of his wife on various occasions. That the plaintiff no.1, at the time of taking the said amount had assured the defendant that he would get the share of his wife transferred in the name of defendant after her recovery from the disease. However, she expired due to her ailment. It is stated that plaintiffs have no concern with the suit property as they have

already received Rs. 5.33 Lacs from defendant for the treatment of Smt. Prabhawati. It is prayed that the suit is without any cause of action and is liable to be dismissed.

REPLICATION

4. In the replication, plaintiffs have reiterated the facts as stated in the plaint and denied the contents of the written statement.

ISSUES

5. On the basis of pleadings, following issues were settled on 27.04.2015:

1. Whether the plaintiffs are entitled for decree of partition in respect of suit property as prayed for ? **OPP**

2. Whether the plaintiff has not come to the court with clean hand and has

suppressed material facts? **OPD**

3. Whether the plaintiff has no locus standi to file the present suit? **OPD**

4. Whether the suit is without cause of action? **OPD**

5. Relief.

EVIDENCE ON BEHALF OF PLAINTIFF

6. Plaintiffs in order to prove their case have examined only one witness i.e. PW-1 Sh. Ganga Prasad who has tendered his evidence Ex.PW1/1 and relied upon following documents:

1. Ex. PW1/A (OSR) is Agreement to Sell and Purchase.
2. Ex. PW1/B (OSR) is Receipt.
3. Ex. PW1/C (OSR) is Affidavit.
4. Ex. PW1/D (OSR) is Undertaking.
5. Ex. PW1/E (OSR) is Will.

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6. Ex. PW1/F (OSR) is Possession Letter.

7. Ex. PW1/G is Site Plan.

EVIDENCE ON BEHALF OF DEFENDANT

7. No evidence has been lead by defendant despite various opportunities.

FINDINGS

8. Heard Ld. Counsel for the parties and perused the complete record file. My issuewise findings are as follows:

ISSUE NO. 1.

Whether the plaintiffs are entitled for decree of partition in respect of suit property as prayed for ? **OPP**

9. The onus to prove this issue is on plaintiffs.

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Plaintiffs have examined Sh.Ganga Prasad as PW-1 who has relied upon the documents Ex.PW1/A to Ex.PW1/F to show that the suit property was jointly purchased in the name of Smt. Prabhawati and Sh. Dinesh Kumar Gupta. The defendant has not disputed these documents. In fact, the defendant in his WS has admitted that the wife of plaintiff no. 1 had contributed Rs. 3 lacs towards the purchase of the suit property. Though defendant has pleaded that he had contributed more amount of Rs. 8 Lacs towards the purchase of the suit property, however, no such document has been placed on record by him to prove the said averment. As per the receipt Ex.PW1/B, only the amount of Rs.1 lac has been paid towards sale consideration of the suit property. The documents Ex. PW1/A to Ex. PW1/F are in the joint name of defendant and Smt. Prabhawati and are with respect to suit property which is situated in an unauthorized colony. No evidence has been led by defendant to prove that he incurred the entire cost of construction of the suit property. There is no dispute to the fact that plaintiffs are the legal heirs of late Smt. Prabhawati. The testimony of PW-1 has remained unrebutted. In view of the unrebutted testimony of PW-1

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and in the absence of any evidence on behalf of defendant,
this issue is decided in favour of plaintiffs and against defendant.

ISSUE NO. 2 to 4

2. Whether the plaintiff has not come to the court with clean hand and has suppressed material facts? **OPD**

3. Whether the plaintiff has no locus standi to file the present suit? **OPD**

4. Whether the suit is without cause of action? **OPD**

11. These issues are taken together as they are interconnected. The onus to prove these issues is on defendant. The defendant has not lead any evidence to discharge the onus laid upon him. Hence, in view of the findings of issue no. 1 and in the absence of any evidence on behalf of defendant, all these issues are decided against defendant and in favour of plaintiffs.

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RELIEF

12. In view of the above discussion, preliminary decree of partition is passed in favour of plaintiffs and against defendant. Plaintiffs are held entitled for one-half share i.e. 50% share in the suit property bearing house no. A-14, Bhagat Singh Marg, Kewal Park, Delhi-110033 specifically shown red in colour in the site plan.

Preliminary decree sheet be prepared accordingly.

**Announced in open
Court on 29.11.2019**

**Kiran Gupta
Additional District Judge-03
North District, Rohini Courts
Delhi**

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