

11.09.2024

Present: Sh. Wahid Ali Khan, Ld. Counsel for the Plaintiff
alongwith plaintiff.
Sh. Gagan Kumar Singhal and Sh. Divyanshu
Pandit, Ld. Counsels for the Defendant alongwith
defendant.

Arguments heard on application U/o 7 Rule 11 CPC
from both the sides.

It is submitted by Ld. Counsel for defendant that the
plaintiff is not in possession of suit property, in respect of which the
plaintiff is seeking the relief of partition and therefore, plaintiff is
liable to pay ad-valorem court fees.

Per contra, it is submitted by Ld. Counsel for plaintiff
that plaintiff is also in constructive possession of the suit property
and has never pleaded her ouster from the suit property, and in this
regard, the plaintiff has duly mentioned in Para No.5 to 7 of the
plaint that plaintiff and her family members also used to reside in the
rooms on the first floor and after the death of the parents, her articles
are still lying in the said rooms. Therefore, in view of the judgment
titled as '*Saroj Salkan Vs. Capt. Sanjeev Singh*' dated 28.11.2008
passed by Hon'ble High Court of Delhi, the plaintiff is not required
to pay any ad-valorem court fees in the present suit.

It is also contended by Ld. Counsel for defendant that
the suit property is not partitionable as the plaintiff has no vested
right in the suit property, as in Para No.13 of the plaint, the plaintiff
has stated that suit property belonged to DDA, which has thereafter
allotted the same to Gandhi Leprosy Ashram Samiti.

It is also submitted by Ld. Counsel for defendant that
besides DDA, the Department of Social Welfare, GNCTD and

Gandhi Leprosy Ashram Samiti are also the necessary parties in the present suit.

Ld. Counsel for the defendant further submits that plaintiff has no cause of action to seek relief of partition in the present suit as the plaintiff has herself filed list of families with House Numbers of Nehru Sewa Cooperative Society Ltd., Tahirpur, Shahdara (which is now converted into Gandhi Leprosy Ashram Samiti), in which it is shown that the House number allotted to the father of the plaintiff Sh. Sewak Ram was at Sr. No.80 and H. No.23 was given to some third party and therefore, the present plaint is liable to be rejected on the ground of clever drafting by the plaintiff.

In this regard, Ld. Counsel for defendant that relied upon the judgment titled as '**Rajendra Bajoria & Ors. Vs. Hemant Kumar Jalan & Ors.**' Civil Appeal No.5819-5822 of 2021 dated 21.09.2021 passed by Hon'ble Supreme Court of India and another judgment titled as '**Shatrunjay Vs. Avinash Gulati**' CM(M) No.1422/18 and CM(M) No.135/2021, passed by Hon'ble High Court of Delhi.

In this regard, it is submitted by Ld. Counsel for plaintiff that it was the initial allotment and distribution of houses and after that, the other residents of the society had mutually exchanged their numbers of houses, pursuant to which Sh. Sewak Ram had taken the property no.23 of Gandhi Ashram, Tahirpur, Delhi - 85 since the year 1980 and the said fact has been duly mentioned by plaintiff in para no.3 of the plaint.

It is further submitted by Ld. Counsel for plaintiff that defendant has no merit in his contention w.r.t. maintainability of the present suit as the defendant herself has stated in Para No.4 of the brief facts in her WS that in the year 1990, Late Sh. Sewak Ram

alongwith his family had shifted to H. No.23, Gandhi Ashram, Tahirpur, Delhi and had exchanged rights vested in them inter-se, due to the issue of communal disturbance and later on, pursuant to an oral family settlement, it was settled that plaintiff alongwith her family shall retain the possession of property bearing No.21/22 (which was given to Sh. Sewak Ram by its original allottee i.e. one Sh. Jaun), Gandhi Ashram, Tahirpur, Delhi and the defendant alongwith her family shall retain the possession of the suit property i.e. bearing No.23, Gandhi Ashram, Tahirpur, Delhi.

In view of the above and considering the defence taken by the defendant in her WS, it is clear that defendant is not challenging the possessory right of the father of the parties herein qua the suit property i.e. 23, Gandhi Ashram, Tahirpur, Delhi. However, the only defence of the defendant is that the plaintiff was given a separate property no.21 after the death of its original allottee Sh. Jaun, as he died without any LRs and agreed to transfer his possession to Sh. Sewak Ram as he had taken care of the said Sh. Jaun, and pursuant to the oral family settlement, the suit property came into the share of the defendant.

Needless to state that for the purpose of disposal of the application U/o 7 Rule 11 CPC, only the averments of the plaint has to be considered, and the plaintiff has duly mentioned all the above facts pertaining to the suit property and her consequential right to seek partition in the same being the daughter of Late Sh. Sewak Ram, in the present plaint, without prejudice to the rights and contentions of the defendant to prove the oral partition/ family settlement between the parties in the trial.

Accordingly, the application U/o 7 Rule 11 CPC filed on behalf of defendant stands dismissed with costs of Rs.10,000/- to be paid by defendant to the plaintiff, for taking frivolous grounds in

his application U/o 7 Rule 11 CPC for challenging the maintainability of the present suit qua the suit property, whereas on the other hand, the defendant herself is claiming possessory rights in the suit property through her father i.e. Late Sh. Sewak Ram - as pleaded and claimed by the plaintiff in the instant suit - and the defendant is also not disputing that the suit property initially belonged to their father Sh. Sewak Ram.

Pleadings are complete. On the basis of pleadings of parties, following issues are framed:-

- i) Whether plaintiff is entitled to decree of partition and declaration qua the suit property against the defendant, as claimed ? OPP.
- ii) Whether plaintiff is entitled to decree of Permanent and mandatory injunction as prayed ? OPP
- iii) Relief.

No other issue arises or pressed for. Both the parties are directed to file list of witnesses within 15 days from today with advance copy to opposite party. Plaintiff is directed to supply the advance copy of evidence by way of affidavit of its witnesses to defendants at least one week before NDOH.

Put up for PE on 15.01.2025.

(Ankur Jain-II)
DJ-02, SHD District
KKD/Delhi 11.09.2024