

5

**CS DJ ADJ 987/19**

**AMIT KUMAR Vs. OMBATI**

06.09.2023

Present: Sh. R.D. Kaushik, Ld. Counsel for the plaintiff.  
Sh. Prashant, Ld. Proxy counsel for Sh. Lal Singh Thakur, Ld.  
Counsel for the defendant no.1

Process issued to defendant no. 2 has not been received back.

Ld. Counsel for the plaintiff submits that the defendant no.2 is residing at Uttar Pradesh and deliberately avoiding the receipt of summons.

In the interest of justice, **defendant no. 2 be served through concerned District Judge, through all authorized modes including Whatsapp & email, on filing of PF for NDOH.**

Ld. Counsel for the plaintiff further submits that the defendant no. 1 has already filed written statement on 15.10.2022. Counsel for the plaintiff sought time to file replication to the written statement of defendant no.1.

Heard. Let the replication, if any be filed by the plaintiff within 2 weeks with advance copy to other side.

Perusal of record reveals that the present suit is filed for '*Declaration and Partition*' by the plaintiff, who is stated to have purchased half share in suit property from the defendant no. 2 (other half share pertains to defendant no.1) via unregistered Agreement to Sell dated 31.01.2017.

Counsel for the plaintiff also submits that by virtue of unregistered Agreement to Sell, he entered into the shoe of defendant no. 2 and possession by defendant no. 2 would be the considered as possession on behalf of the plaintiff.

: page 2 :

In the considered opinion of this court, plaintiff has never been in actual physical possession of the suit property and filed the present suit for Declaration and Partition without seeking any relief for possession.

On inquiry, during the court proceedings, Ld. Counsel for the plaintiff submits that the suit property is the independent house, was consisting only ground floor at the time of its purchase. Ld. Counsel for the plaintiff further submits that at the time of filing the present suit, the suit property was in the possession of the defendant no.1 and he is not aware when defendant no.2 vacated/left the suit premises. Ld. Counsel for the plaintiff further submits that during the pendency of present suit, the defendant no. 1 given possession to the Builder for the purpose of re-structure the property upto 4 storey.

Ld. Counsel for the plaintiff also submits that the suit property falls under unauthorized colony. In the opinion of this court, the plaintiff shall pay the court fees as per the suit valuation of his claim. Plaintiff has valued the suit property for Rs. 80 lakhs for the purpose of pecuniary jurisdiction before this court and paid only fixed court fees of Rs. 20/-.

Plaintiff is directed to show the maintainability of the present suit in lieu of deficient court fees.

Put up for arguments on aspect of maintainability of the present suit **on 21.09.2023.**

**Interim order to continue till the next date of hearing.**

**(SHILPI M JAIN)**  
**ADJ-05 (SW):Dwarka Courts**  
**New Delhi:06.09.2023**