
(2012) 09 DEL CK 0090
In the Delhi High Court
Case No : CS (OS) 1292 of 1992

Jawahar Lal Khanna

APPELLANT

Vs

Shri Jia Lal Khanna

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Stamp Act, 1899 — Section 2(15)

Citation : (2012) 09 DEL CK 0090

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.C. Singhal, for the Appellant; Subodh K. Pathak and Mr. Sachin Datta, for D-3, for the Respondent

Judgement

Valmiki J Mehta, J.—In this suit a preliminary decree was passed on 14.5.2009 giving 1/3rd share to the plaintiff in the properties bearing No. B-III/31, Lajpat Nagar, New Delhi and XIII/2407-15(New) Teliwara, near Sadar Bazar, Delhi. This preliminary decree has become final as appeal against the same has been dismissed by the Division Bench on 23.12.2011 with costs of Rs. 25,000/-. The Local Commissioner has filed a report and it is reported that the property cannot be partitioned and should be acquired by the parties by internal auction among themselves.

2. In view of the aforesaid position a detailed order was passed on 5.7.2012 which reads as under:-

1. This suit was decreed on 14.5.2009 passing a preliminary decree giving 1/3rd share to the plaintiff in two properties being B-III/31, Lajpat Nagar, New Delhi and XIII/2407-15 (New) Teliwara, near Sadar Bazar, Delhi. The defendant No. 1 filed an appeal, and which appeal has been dismissed by the Division Bench on 23.12.2011 and in fact costs of Rs. 25,000/- were imposed. This order of the Division Bench as on date is final and binds this Court.

2. I have now to take steps for passing of final decree. A Local Commissioner

was appointed by this Court and who has reported that properties cannot be partitioned and therefore the parties should acquire the properties by internal auction among themselves. Obviously, if the parties cannot purchase the properties by internal auction, the same would have to be sold. The defendant No. 1 has filed an application which is said to be "objections" to the report of the Local Commissioner. These objections have been filed on 12.7.2011. This is actually an application which has to be registered by the Registry. This application be registered by the Registry and be given a number. These objections read as under:-

1. That the Id. Local Commissioner Sh. G.P. Thareja appointed by this Hon''ble Court vide order dated July 28, 2010 has filed his report in respect of property bearing No. B-III/31, Lajpat Nagar, New Delhi suggesting that the said property be sold by private auction amongst the parties to the suit failing which the property may be sold by public auction.

2. That however the learned Local Commissioner at the time of making the suggestion that the said property be sold by private auction amongst the parties to the suit failing which the property may be sold by public auction has failed to consider that defendant No. 1 is the absolute owner of the suit property in view of the affidavits dated 10.11.1976 filed by Sh. Din Dayal Khanna and Sh. Jawahar Khanna before the District Judge, Delhi.

3. That the Id. Local Commissioner has further failed to take into consideration the fact that the above mentioned property is also the subject matter of CS(OS) No. 4633 of 1992, and number of orders have been passed in the said suit restraining defendant No. 1, Sh. Jia Lal Khanna from creating transferring, alienating or creating any third party interest in the suit property. Hence in light of the orders passed in CS(OS) 4633 of 1992 the suggestion made by the Id. Local Commissioner that the said property be sold by private auction amongst the parties to the suit failing which the property may be sold by public auction cannot be accepted.

4. That the defendant No. 1 has also filed an appeal against order dated 14.05.2009 being R.F.A. No. 70/2009 and the said appeal has been admitted by the Hon''ble Division Bench. In view of this the suggestion of the learned Local Commissioner that the suit property be sold by private auction amongst the parties to the suit failing which the property may be sold by public auction cannot be accepted.

In view of the above mentioned facts it is most respectfully prayed that the suggestions made by the learned Local Commissioner Sh. G.P. Thareja be dismissed at this stage.

It is prayed accordingly.

3. In my opinion, these cannot be said to be objections for preventing any further orders being passed for a public auction or a public sale of the properties.

The objections of the defendant No. 1 are therefore dismissed.

4. Let the parties within a period of four weeks from today get offers from prospective buyers giving the highest price with respect to both the aforesaid properties which are subject matter of the preliminary decree. In case, the parties fail to bring any prospective buyer on or before the next date of hearing, then, the procedure with respect to public auction or newspaper insertion for selling of the properties would be taken up.

5. List on 7th September, 2012.

3. In law, once a preliminary decree becomes final and directions are made for selling of the property, at that stage a final decree for partition has to be passed and Government Revenue has to be paid by means of non-judicial Stamps. u/s 2(15) of the Indian Stamp Act, 1899, an instrument of partition includes a decree which is passed by a Court. I have recently considered this aspect in the judgment dated 3.9.2012 in CS(OS) No. 541/2003 titled as Shri Ashok Kumar Arora vs. Shri Om Prakash & Ors., and where I have directed drawing up of a final decree in view of the fact that orders for sale of the property have been passed. In view of the aforesaid position, let now a final decree be drawn up confirming a preliminary decree dated 14.5.2009 and also observing therein that the property cannot be partitioned by metes and bounds and will have to be sold. Any issue with respect to sale of the properties will be an issue to be dealt with in the execution proceedings, if any.