
(2013) 08 DEL CK 0358

In the Delhi High Court

Case No : Regular First Appeal 83 of 2013 and CM No. 2334 of 2013

Prithvi Raj Soin

APPELLANT

Vs

Anjana Kumari Soin and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0358

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Indu Shekhar and Mr. Ankush Shekhar, for the Appellant; Inderjeet Saroop, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This first appeal was preferred against the judgment and decree dated 14.08.2012 in Civil Suit No. 14/2007 (Unique Case I.D. No. 02401C0047452007) of the Court of Additional District Judge-09, Tis Hazari Courts, District Central, Delhi. The said suit was filed by the respondents No. 1 to 6 against the appellants and the respondents No. 7 to 14 for partition of property No. 757, Ward No. 6, Mehrauli, New Delhi. The learned Additional District Judge by the impugned judgment has passed a preliminary decree for partition by metes and bounds declaring the respondents No. 1 to 6 to be collectively entitled to one-sixth share in the said property. The appellants and the respondents No. 7 to 14 were also restrained from transferring, selling, mortgaging or creating any lien over the said property. Notice of this appeal was issued. Vide order dated 15.03.2013, the parties were referred to the Mediation Cell of this Court. Mediation was however unsuccessful. However thereafter when the matter came up before this Court on 03.05.2013, the counsel for the respondents No. 1 to 6 stated that the respondents No. 1 to 6 were willing to collectively accept Rs. 12,00,000/- towards their one-sixth share in the suit property. The matter was adjourned to enable the counsel for the appellants to take instructions. The counsel for the appellants on 30.05.2013 stated that the said offer of the respondents No. 1 to 6 was acceptable to the appellants and sought two months

time to make the payment. Accordingly, the matter was adjourned to today.

2. The counsel for the respondents No. 1 to 6 informs that in the interregnum a final decree for partition has also been passed in the suit; that the respondents No. 1 to 6 had put the total value of the property at Rs. 60,00,000/- and since the appellants or any other respondents failed to submit any bid, the said valuation was accepted and a final decree for partition has been passed directing that upon the respondents No. 1 to 6 depositing five-sixth of the total value of Rs. 60,00,000/- in the court, the appellants and the remaining respondents shall deliver possession and convey title of the said five-sixth share in favour of the respondents No. 1 to 6.

3. The counsel for the appellants states that he has brought six pay orders for Rs. 2,00,000/- each in the name of each of the respondents No. 1 to 6 and is willing to handover the same to the counsel for the respondents No. 1 to 6 in lieu of the one-sixth share of the respondents No. 1 to 6 in the property.

4. The counsel for the appellants on enquiry states that since it is the appellants alone who are paying the said sum of Rs. 12,00,000/- to the respondents No. 1 to 6, the one-sixth share of the respondents No. 1 to 6 will upon the said payment stand transferred/conveyed to the appellants, to the exclusion of the respondents No. 7 to 14.

5. Though counsel for the respondents No. 7 to 14 had appeared earlier, none appears for them today.

6. The counsel for the appellants states that though he has is not holding the vakalatnama on behalf of respondents No. 7 to 14 but they have no objection to the said arrangement.

7. The counsel for the appellants and the counsel for the respondents No. 1 to 6 consent to modification of the final decree dated 08.04.2013 for partition also, even though this appeal was confined to the challenge to the preliminary decree.

8. The same is permitted.

9. The pay orders for Rs. 12,00,000/- have been handed over by the counsel for the appellants to the counsel for the respondents No. 1 to 6 who has accepted the same on behalf of the respondents No. 1 to 6 in full and final settlement of all claims of the respondents No. 1 to 6 towards their one-sixth share in the property No. 757, Ward No. 6, Mehrauli, New Delhi.

10. Accordingly, though this appeal, insofar as against the preliminary decree for partition, is infructuous in view of the appellants admitting the respondents No. 1 to 6 to be having one-sixth share and paying value thereof and is disposed of as such but the final decree dated 08.04.2013 of partition is set aside and it is further declared that the appellants having paid the consideration of the one-sixth share of the respondents No. 1 to 6 in the property No. 757, Ward No. 6, Mehrauli, New Delhi to the respondents No. 1 to 6, would be entitled to the said

one-sixth share in the property as against the respondents No. 7 to 14. Since the preliminary decree for partition also does not declare the inter se shares of the appellants and the respondents No. 7 to 14, need is not felt to decide the same in this appeal.

11. In view of the respondents No. 1 to 6 having received the value of their share, the decree dated 14th August, 2012 of injunction restraining the appellants and respondents No. 7 to 14 from transferring, selling, mortgaging or creating any lien over the property is also set aside. The appeal is disposed of leaving the parties to bear their own costs. Decree sheet be drawn up.