

(2008) 08 DEL CK 0123
In the Delhi High Court
Case No : C.S. (OS) 1426 of 2007

Smt. Beena Sharma and Another

APPELLANT

Vs

Shri Narinder Kumar Sharma Etc.

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 1

Citation : (2008) 08 DEL CK 0123

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : B.L. Anand, for the Appellant; Virender Mehta, for Defendant No. 1, Ashok Kumar Sharma, for Defendant No. 2 (Party-in-Person), Anil Kumar Sharma, for Defendant No. 3 (Party-in-Person) and T.S. Chaudhary, for Defendants Nos. 4 and 5, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This suit is listed for framing of issues. However, on perusal of pleadings and the admitted documents, it is found that the parties are not at issue and as such I am proceeding to pronounce the judgment under Order 15 Rule 1 CPC. The plaintiffs are the widow and son of late Shri Surinder Kumar Sharma. Shri Surinder Kumar Sharma was the brother of the defendant Nos. 1 to 5. Shri Surinder Kumar Sharma and the defendant Nos. 1 to 5 were the sons and daughter of one Shri N.L. Sharma.

2. The suit is for partition with respect to House No. G-41, Radhey Puri, Delhi admeasuring 260 sq yards. The defendant No. 6 claiming one half share of the said house had instituted a suit in this Hon'ble Court being CS(OS) 2646/1998 against Shri Surinder Kumar Sharma (predecessor of the plaintiffs) and the defendant Nos. 1 to 5 herein. The said suit was decided by judgment dated 5th July, 2006 vide which the defendant No. 6 was held to be owner of one half share i.e. 130 sq yards in the said house and shri Surinder Kumar Sharma (predecessor of plaintiffs) and defendant Nos. 1 to 5 held to be owners of other half share i.e., 130 sq yards in the said house; the house was also partitioned by

metes and bounds with the green portion in the site plan filed in the said suit falling to the share of defendant No. 6 and the red portion falling to the share of Shri Surinder Kumar Sharma (predecessor of the plaintiffs) and the defendant Nos. 1 to 5 and the portion marked Blue comprising of court yard, latrine and bath room remaining for common use. The plaintiffs now claim 1/6th share in half of the house shown in the red colour in site plan (supra). Defendant No. 1, 2 and 3, 4 and 5 and defendant No. 6 have filed separate written statements. The defendant No. 6, of course, claims no share in the other half share of the house and of which partition is claimed in the present suit. The plaintiffs also have impleaded the defendant No. 6 only as a proper party to the suit.

3. The defendant Nos. 4 and 5 have supported the case of the plaintiff. The defendant No. 1 and the defendant Nos. 2 and 3 have, in their written statements, not disputed (i) that the plaintiffs are the widow and son of Shri Surinder Kumar Sharma; (ii) the judgment in CS(OS)2646/1998. They have not claimed that the share of Shri Surinder Kumar Sharma in the house has devolved upon them in any manner whatsoever. They have, however, contended that the plaintiffs are not in possession of the property and have also stated that the defendant Nos. 2 and 3 have preferred an appeal against the judgment dated 5th July, 2006 in CS(OS) 2646/1998 and which appeal is stated to be pending.

4. A perusal of the judgment dated 5th July, 2006 in CS(OS) 2646/1998 shows that the defence of Shri Surinder Kumar Sharma and the defendant Nos. 1 to 5 in the said suit was common. Shri Surinder Kumar Sharma and the defendant Nos. 1 to 5 contested the said suit claiming that the defendant No. 6 had no share in the house and that their father Shri N.L. Sharma was the sole owner of the house and upon the demise of Shri N.L. Sharma, Shri Surinder Kumar Sharma and defendant Nos. 1 to 5 were the only owners of the entire house. This Court, however, found that Shri N.L. Sharma was the owner of one half undivided share only in the house and the remaining half share in the house belonged to the defendant No. 6 and, accordingly, a decree for partition as aforesaid was passed. I had, during the course of hearing, put to the counsel for the defendant Nos. 2 and 3 that since their case in CS(OS) 2646/1998 was of the defendant No. 6 having no share in the house, the appeal filed by the defendant Nos. 2 and 3 herein could only be on the said aspect and could not possibly be challenging the share of Shri Surinder Kumar Sharma (predecessor of the plaintiffs) in the house. The counsel for the defendants admitted that as per their case and the case of Shri Surinder Kumar Sharma in the said suit, Shri S.K. Sharma and each of the defendant Nos. 1 to 5 had 1/6th share in the house. Thus, the shares in the property subject matter of partition are not in issue.

5. The only impediment which remains to the passing of a preliminary decree is the plea of the defendants of the plaintiffs not being in possession. It is, however, not disputed that Shri Surinder Kumar Sharma (predecessor of the plaintiffs) was in possession of the house. The rights of Shri Surinder Kumar Sharma have devolved upon the plaintiffs. The present is, thus, not the case of ouster any of

the co-sharer requiring payment of ad valorem court fees. The possession of one co-sharer is the possession of the other. Thus, no issues arise for adjudication in the present suit. The preliminary decree for partition is passed declaring the plaintiffs together to be having 1/6th undivided share and each of the defendant Nos. 1 to 5 having 1/6th undivided share in half portion of the house shown in green colour in the site plan in this suit and filed in CS(OS) 2646/1998 and which has not been disputed by any of the parties. Similarly, they have equal share in the common portions also of the house. Decree sheet be drawn up accordingly.

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Vide separate judgment, a preliminary decree for partition has been passed. However, since the appeal against judgment in CS(OS) 2646/1998 is stated to be pending, the further steps for partition of the property are deferred with liberty to any of the parties to apply as and when need arises. The status quo order made on 31.08.2007 to continue till final decree for partition.