

Himani Goel vs Suman Jain & Anr on 19 July, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 99/2021, I.A. 2200/2021, I.A. 2666/2021 & I.A. 6000/2021

HIMANI GOEL

Through: Ms.Akanksha Choudhary, Advocate

versus

SUMAN JAIN & ANR.

Through: Mr.Sachin Mishra, Advocate.

Ms.Jaya Tomar, Advocate (SBI)

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 19.07.2021 (hearing through Video Conferencing) The suit filed by the plaintiff makes the following prayers:-

"i. Pass a preliminary decree of partition in favour of the Plaintiff and against the Defendants in respect of the suit property i.e. property bearing no. House No. 7, Road No. 27/A, East Punjabi Bagh, New Delhi admeasuring 280 Sq. Y ds approximately as more specifically shown in the site plan attached by metes and bounds.

ii. Pass a declaration to the effect that the Plaintiff is the lawful owners of their respective shares in the suit property i.e. 1/3rd.

iii. Pass a decree of possession in favour of the Plaintiffs and against the Defendants thereby ensuring unhindered entry of the Plaintiff, to the suit property. iv. Appoint a Local Commissioner with the direction to visit the suit property to examine all feasibilities for effective division of suit property amongst its co-sharers. Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.07.2021 15:00:10 This file is digitally signed by PS to HMJ ANU MALHOTRA.

v. Pass a final decree of partition in terms of the report of the Local Commissioner or in any other mode deemed fit and proper by this Hon'ble court.

vi. Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their legal heirs, servants, attorneys,

successors etc. from creating any third party interest in respect of the suit property and part with possession of the suit property in whole or in part in any manner whatsoever till the property is partitioned by metes and bounds. vii. The cost of the suit may also kindly be awarded in favour of the Plaintiff and against the Defendants. Any other order/relief/direction may also kindly be passed in favour of the Plaintiff and against the Defendants as this Hon'ble Court may deems fit, just and proper according to the facts and circumstances of the present case."

Vide order dated 12.02.2021, it was directed as under:-

"CS(OS) 99/2021 This is suit for partition, possession, declaration and permanent injunction. The plaintiff claims to be the daughter of Late Sh. Jagdish Chander Jain who had purchased the suit property i.e House No. 7, Road No. 27/A, East Punjabi Bagh, New Delhi out of his fund and Mr.Jagdish Chander Jain died intestate on 11.10.2012 leaving behind plaintiff and both the defendants as his legal heirs.

It has been further submitted that in December, 2020, plaintiff came to know that the defendants are trying to sell the suit property and hence the present suit has been filed.

Issue summons to the defendants through all modes, including dasti on petitioner taking steps within ten days from today. Affidavit of service be filed at least one week prior to the next date of hearing.

Written statement be filed within four weeks from the date of service of summons with a copy to the counsel for the petitioner, who may file rejoinder thereto, if any, within four weeks thereafter.

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This is an application under Order 39 Rules 1&2 r/w Section 151 of Code of Civil Procedure, 1908 seeking ex parte ad- interim injunction with the following prayer clause:-

1. Pass and ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their legal heirs, servants, attorneys, successors etc., from creating any third party interest in respect of the suit property bearing No.House No. 7, Road No. 21/A, East Punjabi Bagh, New Delhi admeasuring 280 Sq. Yds. Approximately and part with possession of the suit property in whole or in part in any manner whatsoever till the final disposal of the suit on merit.

2. Pass an ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their legal heirs, servants, attorneys,

successors etc., from doing any construction/damage/alteration on the suit property bearing No. House No. 7, Road No. 27/A, East Punjabi Bagh, New Delhi admeasuring 280 Sq. Yds. Approximately.

3. Any other order/relief/direction may also kindly be passed in favour of the plaintiff and against the defendants as this Hon'ble Court may deem fit, just and proper according to the facts and circumstances of the present case."

Issue notice of this application alongwith the summons of the suit to the defendants through all modes, including dasti on petitioner taking steps within ten days from today. Affidavit of service be filed at least one week prior to the next date of hearing.

Reply be filed within four weeks from the date of service of notice with a copy to the counsel for the petitioner, who may file rejoinder thereto, if any, within four weeks thereafter.

All the parties are directed to maintain status quo regarding the possession and ownership of the suit property bearing House No. 7, Road No. 27/A, East Punjabi Bagh, New Delhi admeasuring 280 Sq. Yds.

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List this matter on 28.04.2021."

This application has been filed on behalf of the SBI under Order 1 Rule 10(2) of the CPC seeking to be allowed to be arrayed on record as a party to the suit submitting inter alia to the effect that there are proceedings before the DRT in relation to the asset in question; that a receiver was appointed under Section 14 of the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 vide order dated 11.03.2020 by the learned CMM; that the present suit has been filed in collusion between the plaintiff and the defendant nos. 1 & 2 to usurp _possession of the secured assets by the received without mentioning about the relevant facts of the mortgage of the secured asset, the applicant/Bank by signing a relinquishment deed by the plaintiff in favour of the defendant no.1 as also the aspect of approach to the bank for settlement.

It is apparent on a bare perusal of the application and on a bare perusal of the plaint in CS(OS)99/2021 that the SBI is not a necessary party to the suit. The prayer made vide I.A.6000/2021 is thus disallowed in as much as, the proceedings under the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 are apparently de hors the proceedings in a civil suit.

This application has been filed by the applicant/SBI seeking a clarification that the order dated 12.02.2021 is not applicable to the applicant/Bank to exercise its right as mortgage of the suit property subject of Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 proceedings instituted by the applicant/Bank. Signature Not Verified

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It is essential to observe that the Court has already observed herein above that the proceedings under the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 are not governed by the proceedings in a civil suit. No further clarification is required of order dated 12.02.2021.

I.A.2666/2021 is disposed of accordingly. This is despite the prayer made on behalf of the defendant nos. 1 & 2 seeking further time to file the response to the said application, in as much as, ample opportunities for the same was already granted vide order dated 17.03.2021.

CS(OS) 99/2021 A submission is however made on behalf of the defendant nos. 1 & 2 that an opportunity to explore the possibility of a settlement be granted between the plaintiff, the defendants as well as the SBI. As regards the SBI, it is open to the defendants to seek an inter se settlement between the defendants and the SBI de hors the Court proceedings in the instant case. The plaintiff and the defendant nos. 1 & are however directed to appear before the Co-ordinator of the Delhi High Court Mediation & Conciliation Centre on the date 02.08.2021 with the report of the Mediation Centre being returnable for the date 20.09.2021.

ANU MALHOTRA, J JULY 19, 2021 'Neha Chopra' Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.07.2021 15:00:10 This file is digitally signed by PS to HMJ ANU MALHOTRA.