

Sukh Sagar Sahni & Ors vs Salil Sagar Sahni on 7 January, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(05) 566/2016 & IA No.13726/2016 (u/O XXXIX R-1&2 CPC)

SUKH SAGAR SAHNI & ORS Plaintiffs
Through: Mr. Ashok Popli, Adv.

Versus

SALIL SAGAR SAHNI Defendant
Through: Mr. Mandeep Singh Vinaik, Ms.
Anjali Sharma, Mr. Deepak Bashta
and Mr. Abhimanyu Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER

% 07.01.2019

1. The parties in this suit for partition of property No.R-858, New Rajinder Nagar, New Delhi were referred to Mediation Cell of this Court which is stated to be underway. However, on enquiry, it is informed that the property belonged to the predecessor of the parties who has under his Will bequeathed ground floor of the property to the defendant, first floor and roof above second floor to the plaintiff No.1 and the second floor to the plaintiffs No.2 to 4 together.

2. If that is so, then the suit for partition is misconceived inasmuch as, the parties under the Will are owners of separate portions of the property and the need for the four plaintiffs to seek partition against the defendant does not arise. There is no part of the property jointly owned by plaintiffs and defendant, which is for partition. Only if the plaintiffs No.2 to 4 want to divide the second floor amongst themselves, will a suit for partition lie; but that is not the case.

3. The counsel for the plaintiffs states that he has filed this suit because the leasehold right in the land underneath the property were converted into freehold in the joint names of the four plaintiffs and the defendant and that he was under the impression that owing to the execution of the said conveyance deed, all the parties have equal undivided share in the property.

4. However, it is found that the Will has not been produced.

5. Prima facie the thought process of the counsel for the plaintiffs appears to be erroneous inasmuch as notwithstanding the execution of the conveyance deed, the title to the property is admittedly held

by the parties under the Will and under which they are owners of separate portions of the property. Moreover, only the freehold rights in the land underneath the property would be held by the parties in undivided share and which indeed cannot be divided/partitioned.

6. The counsel for the plaintiffs states that he will produce the Will within two days with advance copy to the counsel for the defendant.

7. List on 16th January, 2019.

RAJIV SAHAI ENDLAW, J.

JANUARY 07, 2019 'bs'..