

**Santosh Sachdeva Vs. Yog Raj**

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**SooperKanoon Citation :** [sooperkanoon.com/689156](http://sooperkanoon.com/689156)

**Court :** Delhi

**Decided On :** Dec-21-1979

**Reported in :** ILR1980Delhi87

**Judge :** Sultan Singh, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 34

**Appeal No. :** Suit Appeal No. 513 of 1979

**Appellant :** Santosh Sachdeva

**Respondent :** Yog Raj

**Advocate for Pet/Ap. :** S.K. Khurana and; S.S. Johar, Advs

**Judgement :**

**Sultan Singh, J.**

(1) This is a suit for declaration that the property in suit was orally partitioned in March, 1978. The plaintiff is the wife of the defendant. Both of them were granted perpetual Sub-Lease of plot No. 8 street No. 6 at Sarva Priya Vihar, New Delhi on 27th August, 1974. The area of the plot is 300 Sq- yards. The sub-lease was granted by Sarvodya Cooperative House Building Society Ltd. The plaintiff and the defendant after arranging for funds constructed property thereon. The plaintiff alleges that there were certain. disputes towards the repayment of loan, realization

of rents of the building and payment of taxes and therefore, certain family members intervened and there was oral partition of the property in suit in March, 1978 whereby the first floor was allotted to the plaintiff and the ground floor was allotted to the defendant. The plaintiff further alleges that the parties agreed that the repayment of loans shall be the responsibility of the respective parties. The portion allotted and in occupation of the plaintiff is shown and marked 'B' and the portion allotted and in occupation of the defendant is shown and marked 'A' in the plan attached to the plaint. The plaintiff further alleges that the said partition has been acted upon, that in last week of February, 1979 defendant started interfering in the peaceful possession and enjoyment of the portion of the plaintiff by appropriating the rent received from the portion in occupation of the plaintiff and refused to pay his share of taxes. The plaintiff thus prays that a decree for declaration be granted to the effect that the plaintiff and the defendant are bound by oral agreement between them in March, 1978 dividing the property equally. The defendant filed the written statement admitting all the allegations contained in the plaint. The defendant says that he has no objection if the prayer as made by the plaintiff in the suit is granted. The claim of the plaintiff in the suit is not denied by the defendant and therefore, it appears that no decree for declaration is necessary. The parties were directed to file documents in support of their plea that there was oral partition and the same was acted upon. A photostat copy of the perpetual sub-lease relating to the suit plot has been filed besides an agreement of license dated 27th March, 1978 by which the plaintiff is alleged to have given the first floor of the building to one Sh. Bindigana Vale Krishna Iyengar Bhojaraja on a license fee of Rs. 1,100 per month. In this license deed the plaintiff describes herself as the co-owner of the building. She does not say that she is the owner of the first floor of the building which she alleges was allotted to her. Other documents filed by the plaintiff are not relevant for the purposes of determination if there was any oral partition or the same was acted upon.

(2) As the defendant admits the allegations contained in the plaint, there is no necessity to grant any declaration. Section 34 of the Specific Relief is as under :

'Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such

character or right, and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief : Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a, mere declaration of title, omits to do so.'

(3) The plaintiff has no absolute right to claim a decree for declaration. This section confers a discretion upon the court to grant or not a declaration sought for. The discretion is to be exercised on well known Judicial principles. The present suit appears to be a device to avoid payment of stamp duty on a partition deed or a partition decree. Nothing has been produced on record to show that this alleged oral partition was ever acted upon. A court would not pass a decree for declaration where the object of the suit is to avoid payment of stamp duty or the court fees and the court would be justified to refuse the relief of declaration. Another reason is that there is no denial by the defendant. If there is no denial, the question is what is the necessity of the declaratory decree. The only purpose appears to be to avoid payment of stamp duty. In these circumstances if the plaintiff is granted declaration it would amount to abuse of the process of the court without payment of the stamp duty. As the defendant does not deny the allegations of the plaintiff she is not likely to suffer at all. In the circumstances I do not consider fit to grant the relief of declaration to the plaintiff. This I do on two grounds namely (1) evasion of stamp duty and court fees and (2) no denial of the alleged rights of the plaintiff by the defendant. I, thereforee, dismiss the plaintiff's suit for declaration with no order as to costs.