

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 2031/2003**

% **17th October, 2012**

RAHUL JAIN & ORS. Plaintiff
Through: Mr. Raunak Jain, Advocate.

versus

NARENDER KUMAR & ORS. CA+ Defendants
Through: Mr. B. Mahapatra, Advocate for defendant
Nos.2A and 2B.
Mr. Atul Kumar, Advocate for defendant
Nos.2,4 (a-d), 5,6, 8 and 9.
Ms. Ruchika Jain, Advocate for defendant
Nos.10, 11 and 13 to 19.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. A preliminary decree was passed in this suit on 30.7.2012. Counsel for the parties agree that in view of the shares of the respective parties and the nature of the properties, it is better if the properties are sold and that too by mutuality among the parties and without assistance of the Court. This mode of sale of properties is preferable because firstly it is difficult to get the buyer in sale proceedings through the Court; secondly sometimes the suit property is

considered as a disputed property which fetches a lesser price; and thirdly it is possible that on many occasions for various reasons parties may not get the complete price of the suit property.

2. Accordingly, let a final decree be drawn up confirming the preliminary decree passed on 30.7.2012. It be further stated in the final decree that the properties will be sold and parties will get their shares in the sale value of the suit properties.

3. It is also agreed that plaintiffs will deposit the necessary stamp papers with respect to drawing up of a final decree of partition as per Article 45 of the Stamp Act, 1899, however, the other parties will also give their shares of the non-judicial stamp duty which is payable. In case, the plaintiffs have to pay an amount of the stamp duty for the shares of the others in the suit property, then, when the properties are sold the plaintiffs will have a first charge on the sale proceed for recovery of the excess amount paid for preparation of the final decree.

4. It is clarified that parties are at liberty, in case the properties cannot be sold outside the Court mutually, to approach this Court by means of an Execution Petition for sale of the properties.

5. It is further clarified that no stamp duty was payable on the preliminary decree as stated in the order dated 30.7.2012, however, non-judicial stamp papers will now be required to be filed for drawing up of the final decree.

6. Suit is disposed of with the aforesaid observations.

OCTOBER 17, 2012
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VALMIKI J. MEHTA, J.