

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

+ FAO(OS) 541/2012

MANMOHAN NATH KAPOOR

..... Appellant

Through: Mr.Vijay Gupta, Mr.B.B.Gupta and
Mr.Chetan Swarup, Advocates.

versus

JAGMOHAN NATH KAPOOR

..... Respondent

Through: Mr.Anupam Shrivastava, Mr.Manish
Shrivastava and Mr.Anil Chandel,
Advocates.

AND

+ FAO(OS) 542/2012

MANMOHAN NATH KAPOOR

..... Appellant

Through: Mr.Vijay Gupta, Mr.B.B.Gupta and
Mr.Chetan Swarup, Advocates.

versus

JAGMOHAN NATH KAPOOR

..... Respondent

Through: Mr.Anupam Shrivastava, Mr.Manish
Shrivastava and Mr.Anil Chandel,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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09.11.2012

Caveat No.1149/2012 in FAO (OS) No.542/2012

Since learned counsel for the respondent/caveator has entered
appearance, the caveat stands discharged.

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CM No.19020/2012 in FAO (OS) No.541/2012
CM No.19024/2012 in FAO (OS) No.542/2012

Allowed subject to just exceptions.

FAO (OS) No.541/2012 and CM No.19019/2012 (Stay)
FAO (OS) No.542/2012

The parties to the suit are brothers both aged over 80 years. The shares in the property are not disputed as 50% each. An endeavour to partition the property has proved to be futile and the report of the local commissioner in that behalf has already been filed and accepted.

There are two appeals before us, one directed against the rejection of the objections to the report of the local commissioner and the other directing public auction of the property.

Insofar as the objections to the report of the local commissioner are concerned, the learned single Judge has found that the local commissioner examined both proposals for division and obtained valuation through a Government approved valuer. The appellant, after having given approval to the appointment of the valuer, sought to challenge the same at a later stage as a desperate move to somehow avoid the property to be sold. There is nothing wrong even in the mode and manner of valuation as is apparent from the fact that the valuer has taken into account the factum of the property being leasehold (an aspect disputed by the appellant) and came to the valuation of Rs.8,15,50,000/-. The best test is that the respondent was willing to pay 50% of the price and offered Rs.4 crores based on the valuation while the appellant was wanting to pay only Rs.2 crores.

The other appeal is directed against the rejection of the application filed by the appellant suggesting other alternative modes for division of the property. The matter has gone twice to the Delhi High Court Mediation and Conciliation Centre, but there has been no settlement. All
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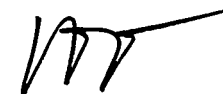
different proposals have been explored but unsuccessfully as there is no trust inter se the parties.

We have already noticed that the respondent offered Rs.4 crores for the share of the appellant while the appellant was wanting to offer Rs.2 crores for the same percentage of the property. The difficulty is that the appellant wants to retain the property and that too at his own price. It is in these circumstances that the learned single Judge directed public auction.

Learned counsel for the appellant at this stage states that the appellant is willing to offer Rs. 4 crores. We are not commenting on this because various endeavours have been made in the past and the best option often is to obtain the correct price in a public auction where the parties can bid to the exclusion of their share. The matter of division of the property cannot be indefinitely postponed.

We find no merit in both the appeals and the same are dismissed with costs of Rs.10,000/- for each appeal.


SANJAY KISHAN KAUL, J


VIPIN SANGHI, J

NOVEMBER 09, 2012/dm