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

+ **CS(OS) No.1938/2008**

RADHESH SINGH

..... Plaintiff

Through: Mr. Prabhjit Jauhar, Ms. Eti Solanki
and Ms. Ankita Gupta, Advs.

versus

VINEET SINGH & ORS

..... Defendants

Through: Mr. Jeevesh Nagrath, Mr. Protosham
Sharma and Ms. Monika Manchanda,
Advs. for D-1 to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.11.2016**

1. This order is in continuation of the earlier order dated 7th September, 2016.
2. Neither the counsel for the plaintiff, nor the counsel for the defendants no.1 to 3 have, post the preliminary decree for partition, come up with any proposal for division of the property by metes and bounds.
3. None appears for the defendant no.4 Smt. Ravinder Kumari.
4. The counsel for the defendants no.1 to 3 states that the property is incapable of division by metes and bounds and a final decree for partition of the property by sale and distribution of sale proceeds amongst the parties as per their share declared in the preliminary decree be passed.
5. The counsel for the plaintiff states that an adjournment be granted to explore the possibility of division of property by metes and bounds.
6. This court had as far back as on 7th September, 2016 made it clear to the counsels to today come up with the proposals for division of the property

by metes and bounds, if the property is capable thereof. The very fact that the plaintiff, even today is unable to suggest any mode of division by metes and bounds and merely makes vague statements that the property comprises of ground floor, first floor and second floor and is capable of division does not entitle the plaintiff to an adjournment. If the parties/counsels themselves are unable to think of any plausible mode of partition by metes and bounds, the question of a Court Commissioner, even if appointed, being capable thereof does not arise.

7. Even otherwise, from the shares of the parties, with the defendants no.1 to 3 together having $\frac{2}{3}^{\text{rd}}$ share and the plaintiff having a share out of the defendant no.4's $\frac{1}{3}^{\text{rd}}$ share in the property, it appears that the property cannot be equitably divided by metes and bounds.

8. The counsel for the defendants no.1 to 3 on enquiry states that the defendants no.1 to 3 do not desire a partition by metes and bounds amongst themselves and will together take the $\frac{2}{3}^{\text{rd}}$ lot in the property.

9. The counsel for the defendants no.1 to 3 however states that the defendants no.1 to 3 be permitted to participate in the auction and to, if are the highest bidder, purchase the share of the plaintiff and the defendant no.4 in the property.

10. The aforesaid option will be given, besides to the defendants no.1 to 3, also to the plaintiff and the defendant no.4.

11. Accordingly, a final decree for partition of property no.17 Rajdoot Marg, Chanakayapuri, New Delhi is passed, by sale thereof and by distribution of sale proceeds amongst the plaintiff on the first part and the defendants no.1 to 3 together on the second part and the defendant no.4 on

the third part, as per their respective shares declared in the preliminary decree for partition.

12. It is further made clear that (i) whichever party is in possession of whichever portion of the property shall deliver vacant peaceful physical possession thereof to the purchaser; and, (ii) all the parties shall be entitled to participate in the sale and to bid for the property and whichever's bid is the highest shall have all the rights of the purchaser and shall, on payment of the sale consideration of the share of the others, be put into vacant peaceful physical possession of the entire property.

13. The parties are left to bear their own costs.

14. Decree sheet be prepared.

15. Needless to state that in terms of the preliminary decree for partition, this decree also shall be subject to orders in RFA(OS) No.118/2014 (erroneously recorded as RFA(OS) No.118/2004 in para 15 of the order dated 7th September, 2016).

RAJIV SAHAI ENDLAW, J

NOVEMBER 15, 2016

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