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

% *Date of decision: 21st August, 2026*

CNR No. DLHC011819962018

+ **RFA 780/2018**

BALWANT SINGH (SINCE DECEASED) THR LRS & ORS

.....Appellants

Through: **Mr. S.C. Singhal & Mr. Parth Mahajan, Advocates.**

versus

SARDAR NAGENDER SINGH (SINCE DECEASED) THR LRS

& ORS

.....Respondents

Through: **Ms. Smita Maan, Mr. Vishal Maan, Mr. Kartik Dabas & Ms. Shweta Chaudhary, Advocates for R-1(b-e). Mr. Jagjit Singh, Senior Advocate with Mr. Preet Singh & Mr. Rahul Khan, Advocates for R-4-6.**

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present appeal has been filed against the impugned judgment and decree dated 19th April, 2018, passed by ADJ-02, New Delhi District, Patiala House Courts, New Delhi.
2. By way of the impugned judgment, a final decree of partition and rendition of accounts has been passed in the suit.
3. Brief facts necessary for deciding the present appeal are as follows:
 - 3.1. Late Sardar Sham Singh was the father of the plaintiffs and



defendants no.1 and 2 and grandfather of defendants no.3 to 6, except plaintiff no.3, who is the daughter-in-law of late Sardar Sham Singh. Late Sham Singh died intestate and thus all his sons and daughters inherited 1/9th share each in the entire estate left by him.

3.2. The properties which were the subject matter of the partition suit from which the present appeal arises are as under:

- i. *Gopi Nath Bazar, Delhi Cantt, III/4/1 to 11, III/4/10A, III/4/16 to 18, III/4/23, III/4/24, III/4/24A, III/4/25, III/4/26, III/4/26A, III/4/27, 27A, 27B, 27C, III/4/28, III/4/31, III/4/32, III/4/50, III/4/51, III/4/57 to 59, III/4/35 to III/4/37.* (hereinafter ‘Gopinath Bazar property’)
- ii. *Nangal Rai, New Delhi, Khasra no. 185, H. No. WZ-446 to 520.* (hereinafter ‘Nangal Rai property’)

3.3. The aforesaid suit was filed by the appellants/plaintiffs before this Court on 20th December, 2001 and was subsequently transferred to the District Court.

3.4. A preliminary decree of partition was passed by this Court on 26th November, 2007, holding that each of the parties, *i.e.* the plaintiffs and the defendants, is entitled to 1/9th share each in the aforesaid properties.

3.5. Thereafter, the parties were referred for mediation to Delhi High Court Mediation and Conciliation Centre. However, no settlement could be arrived at.

3.6. *Vide* order dated 17th April, 2009, a Local Commissioner was appointed to suggest whether the properties are capable of division by metes and bounds and, if so, the modalities thereof.

3.7. The Local Commissioner submitted his report on 19th April, 2017. Both the appellants as well as the respondents filed their objections to the



report of the Local Commissioner.

3.8. After considering the report of the Local Commissioner and the objections of the parties, the Trial Court held that it is not possible to divide the properties by metes and bounds and hence passed a final decree of partition by sale of the subject properties. The operative part of the judgment of the Trial Court is set out below:

19. Hence in view of the above discussion, when parties could not arrive at any mutual settlement to divide the properties as per their shares and the report of the Ld. Local Commissioner makes it amply clear that division of properties by metes and bound is not possible, final decree of partition is hereby being passed in terms of the preliminary decree dated 26.11.2007. Preliminary decree dated 26.11.2007 is hereby made absolute and final holding that property at Gopi Nath Bazar, Delhi Cantt. and Nangal Rai Delhi as detailed above, except for property no. III/4/37 and III/4/8, be put to sale auction, court auction as per rules and procedure and sale proceeds be apportioned amongst the parties as per their respective shares as discussed above i.e. plaintiff no. 1 to 5 and defendant no. 7 shall be entitled to 1/9th share each, defendant no. 1 and 2 1/9th share each and defendant no. 3 to 6 collectively 1/9th share of the entire sale proceeds. Parties as discussed above shall be at liberty to take part in sale auction.

20. Possession of the properties shall be handed over to the auction purchaser in case entire properties are sold to third party in auction-sale and if one party buys out the share of other party then party selling his/her portion shall hand over the possession of the portion under his/her possession to the party purchasing the share.



21. As far as the accounts are concerned in terms of orders dated 26.11.2007 and 31.07.2012 whereby plaintiff no. 2 was appointed as nominee of the parties to collect rent from the properties with further directions to render accounts, it is directed that plaintiff no. 2 shall render the accounts, full and complete, and the amount shall be apportioned amongst the parties as per their respective shares as above. Furthermore if there has been any other party who has been collecting the rent from the properties prior to appointment of plaintiff no. 2 as a nominee, the said party too shall render the full and final, complete accounts and the amount shall be apportioned amongst the parties as per their respective shares. Needless to add that the amount, collected by way of rent, is otherwise admittedly meagre as most of the properties are governed by the provisions of Delhi Rent control Act, 1958.

4. Aggrieved by the aforesaid, the present appeal has been filed.
5. Notice in the appeal was issued *vide* order dated 14th September 2018.
6. The appeal was admitted *vide* order dated 23rd September 2024.
7. At the outset, Mr. Singhal, counsel for the appellant, submits that there is no objection to the sale of the property located at *Nangal Rai, New Delhi*. The scope of the present appeal is limited to the final partition of shops at *Gopi Nath Bazar* property.
8. He assails the aforesaid judgment of the Trial Court by submitting that the Trial Court has failed to accept the report of the Local Commissioner without giving any cogent reasons. The Local Commissioner, in his report, had given a viable method of dividing the properties between the parties. However, the Trial Court has failed to accept the same. He further submits that the properties at *Gopi Nath Bazar, Delhi Cantt*, are leasehold properties and the lease of the said property expired in 2022. Writ petitions are pending with regard to the same, where *status quo* orders have been passed. Hence, the aforesaid properties cannot be sold.



9. Ms. Maan and Mr. Singh, counsel for the respondents, defend the judgment passed by the Trial Court and submit that it is a well-reasoned judgment and the same has been passed after giving due consideration to the report of the Local Commissioner and the objections filed by the parties. It is submitted that the appellants are resisting the sale of the properties as they are in occupation of the majority of the properties.

10. Ms. Maan submits that the Local Commissioner in his report had assigned to the respondents' shops and residential units at *Gopi Nath Bazar, Delhi Cantt*, which were in the occupation of old tenants and drawing meagre rents to the respondents. Hence, the objections were filed by the respondents before the Trial Court, which have been accepted by the Trial Court.

11. I have heard the counsel for the parties and examined the judgment of the Trial Court.

12. In the present case, the Local Commissioner's report, as considered by the Trial Court, shows that the properties comprise a number of shops and residential portions, some of which are in occupation of the parties while others are occupied by old tenants and are yielding comparatively meagre rents. There are also portions which constitute common/open areas and cannot conveniently be allotted exclusively to any one co-sharer. Consequently, merely allotting one shop to each co-sharer, as suggested by the appellants, would not by itself result in an equal or equitable division of the properties corresponding to the respective 1/9th shares. In these circumstances, the Trial Court was justified in considering whether the proposed mode of allocation was capable of bringing about a practical and equitable partition of the properties between the parties.



13. The Trial Court has also considered the objection of the appellants/plaintiffs that some of the properties are leasehold properties and the leases are about to expire. The Trial Court considered the submission of the respondents that they have been allocated rented portions, whereas self-occupied portions have been given to the appellants. Taking into account the aforesaid factors, the Trial Court concluded that the subject properties are incapable of division by metes and bounds and sale auction is the only viable option.

14. The relevant findings of the Trial Court in paragraph 13 are set out below:

13. Hence a careful perusal of the report of Ld. Local Commissioner would reveal that partition by metes and bounds is not possible, feasible. Division of the properties cannot be reasonably or conveniently made. Adjustment of the properties, excess portions or money in lieu of the excess portion, in the given facts and circumstances would be a herculean task. Only option left and which in my considered opinion is also in the interest of all the parties, as well as which shall avoid any bitterness and heart burning amongst the parties, is the sale auction of the properties. This is more so when some of the properties, portions have been let out to various tenants who appear to be enjoying the protection of the Delhi Rent Control Act, 1958. There are also certain alleged encroachers, trespassers in the properties as per the plaintiff's claim. Parties have raised disputes, objections as to the exact nature of the properties and they have not been able to arrive at any consensus regarding distribution as such. There are certain vacant portions, open spaces which cannot be allocated to any particular party and which if left as such would always be a bone of contention amongst the parties. Hence the nature of the properties, their occupation by the tenants and trespassers does not permit a practical partition by metes and bounds. Sale of the properties and distribution of the proceeds would be more beneficial for all the parties, stakeholders.



15. The Trial Court also noted that the suit had been pending for 17 years and ample opportunities had been granted to the parties to explore the settlement and divide properties among themselves by metes and bounds. Despite the same, no consensus could be reached. Accordingly, the Trial Court proceeded to pass a final decree of partition. Paragraph 14 of the judgment of the Trial Court is set out below:

14. Though Ld. Counsel for the plaintiffs request for adjourning the matter sine die submitting that parties are exploring chances of amicable settlement of the dispute/partition, however I am not inclined to adjourn the matter sine die. The application appears to be moved solely to delay, prolong the final decree being passed more so when none of the other party has made similar prayer. It is to be seen that the present matter is now almost 17 years old. More than 10 years have elapsed since the passing of the preliminary decree. Ample opportunities, as is evident from the record, was granted all this while to the parties to explore the settlement and divide the properties amongst themselves by metes and bounds. Parties were also referred for mediation but they have failed to arrive at any consensus despite a decade of opportunity. I find no reasons to keep the present matter which is now almost 17 years old pending in this court as I find no chances of any amicable settlement/partition. If they could not settle it for 17 years, or atleast 10 years they cannot settle it any time soon. In the application moved by the plaintiffs they have put the blame on defendant no. 4 to 6, whereas it is the case of defendant no. 4 to 6 that the proposal of the plaintiffs is unreasonable and not acceptable to them. Hence it appears to be a never ending dispute.

16. The objection regarding the leasehold nature of the properties at *Gopi Nath Bazar* and the expiry of the lease in 2022 does not warrant setting aside of the final decree. The effect of the pending proceedings concerning the leasehold rights can appropriately be considered at the stage when the decree



is sought to be executed.

17. In view of the discussion above, I do not find any infirmity in the judgment of the Trial Court, which requires interference by this Court.

18. Accordingly, the present appeal is dismissed.

19. As noted by the Trial Court, the exact modalities for the auction sale of the properties would be considered in the execution proceedings.

20. Needless to state, the Execution Court would also consider the effect of the pending writ petitions and *status quo* orders, if any, passed by this Court.

AMIT BANSAL, J

AUGUST 21, 2026

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