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

+ CS(OS) 276/2010

RAM LUBHAI

..... Plaintiff

Through: Mr. T.K. Tiwari and Mr. Abhay Kumar
Verma, Advocates with plaintiff in person.

versus

SANJAY BHASIN & ORS

..... Defendants

Through: Ms. Swati Kumar, Advocate for
Mr. Alok Sharma, Advocate for the defendants
with D-1(a), 2, 3(f), 4, 5(a) to (c), 6 and
Mr. Atul Chadha for D-7 in person.
Mr. Rishi Manchanda, Advocate for Mr. Sanjay
Wadhwa with Mr. Sanjay Wadhwa in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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08.07.2015

I.A. 13387/2015 (by the plaintiff u/O I R 10 CPC for addition of necessary parties)

1. The present application has been filed by the plaintiff stating *inter alia* that he has filed the accompanying suit for partition against the defendants in respect of an immovable property owned by late Shri Bhagat Ram, predecessor-in-title of the parties.

2. At the time of instituting the present suit, the plaintiff had arrayed Shri Sanjay Bhasin (grandson of late Shri Bhagat Ram) as defendant No.1 stating in the plaint that he was representing the share of his father, late Shri Ram Dev Bhasin. However, Shri Ram Dev

Bhasin was actually survived by his wife, a son and a daughter, being class-I heirs and the plaintiff ought to have impleaded all the three legal heirs of late Shri Ram Dev Bhasin as co-defendants.

3. Now the present application has been filed by the plaintiff to bring on record the mother and the sister of the defendant No.1 as defendants No.1(b) and (c).

4. Issue notice.

5. Counsel for the defendants accepts notice and states that she does not have any objection to the present application being allowed, particularly, since the parties have arrived at a negotiated settlement through the Delhi High Court Mediation and Conciliation Centre.

6. Accordingly, the present application is allowed. The defendants No.1(b) and (c) are arrayed as co-defendants alongwith defendant No.1 (a) in the present suit.

7. The amended memo of parties enclosed with the present application is taken on record. The Registry is directed to place the same in part-I file.

I.A. 14089/2011 (by the plaintiff u/O XXII R 4 CPC)

1. The present application has been filed by the plaintiff stating *inter alia* that the defendant No.5 had expired on 14.07.2011 and is survived by three sons and two daughters. The details of the legal

heirs of the deceased defendant No.5 have been set out in para 3 of the application.

2. Counsel for the plaintiff states that the defendant No.5's husband had predeceased her. He requests that the five legal heirs may be permitted to step into her shoes.

3. Notice was issued on the present application on 06.09.2011. However, the defendants have not filed a reply in opposition to the present application. Counsel for the defendants states that she does not have any objection to the legal heirs of the defendant No.5 being brought on record and she has already filed her power of attorney on behalf of the said legal heirs.

4. Counsel for the plaintiff states that the amended memo of parties annexed with I.A. 13387/2015 mentions the name of the five legal heirs of the deceased defendant No.5.

5. Accordingly, the present application is allowed, subject to just exceptions. The legal heirs of the deceased defendant No.5 as detailed in the prayer clause are permitted to be brought on record.

6. The application is disposed of.

CS(OS) 276/2010

1. On the last date of hearing, counsels for the parties had stated that they have arrived at a settlement with one Mr. Sanjeev Wadhwa,

a builder, who had agreed to purchase the plaintiff's and the defendants' undivided shares in the suit premises, except for Mr. Sanjay Bhasin, defendant No.1 [described as defendant No.1(a) in the amended memo of parties]. It was further agreed by the parties that Mr. Sanjay Bhasin would be entitled to possession of the ground floor, after the building is reconstructed by the builder.

2. Vide order dated 07.02.2014, a preliminary decree was passed declaring that the plaintiff and the defendants are co-owners to the extent of $1/8^{\text{th}}$ share each in the suit property bearing No.38/5, Punjabi Bagh (East), New Delhi, measuring 280 sq. yards. Thereafter, a Local Commissioner was appointed to submit a report as to whether the suit property could be partitioned by metes and bounds. In the meantime, the parties had approached the Court for being referred to mediation, which has resulted in a settlement being arrived at and recorded in the Settlement Agreement dated 29.05.2015.

3. Counsels for the plaintiff and the defendants jointly state that they had approached the builder, who has expressed his readiness and willingness to purchase the shares of all the parties except for the share of defendant No.1(a), (b) and (c), for a total sale consideration of Rs.4,62,00,000/-. It has been agreed by the parties that the builder/his nominee shall pay a sum of Rs.72 lacs to the plaintiff for

her 1/8th undivided share in the suit property. Out of the said amount of Rs.72 lacs, a sum of Rs.35 lacs has already been received by the plaintiff. It has been agreed that the balance sale consideration of Rs.37 lacs shall be paid by the Builder to the plaintiff at the time of execution of the sale deed.

4. Counsels for the parties and the Builder state that the Builder/ his nominee has agreed to pay liquidated amounts to all the defendants except for the defendant No.1(a), (b) and (c), who would be entitled to receive possession of the ground floor of the suit property, after the same is reconstructed.

5. A sum of Rs.65 lacs each shall be paid to the defendant No.2, defendant No.3(a) to (f) collectively, defendant No.4, defendant No.5(a) to (c) collectively, defendants No.6 and 7 at the time of execution of the sale deed in favour of the Builder / or his nominee, in terms of the settlement arrived at and recorded in the Settlement Agreement.

6. Mr. Manchanda, learned counsel for Mr. Wadhwa confirms the fact that his client is a signatory to the aforecited Settlement Agreement dated 29.05.2015. Similarly, the plaintiff and all the defendants are also signatories to the Settlement Agreement. Some of the parties are present in Court and their presence has been duly

recorded.

7. Counsel for the parties jointly states that that they do not have any objection to the Settlement Agreement being taken on record and the suit being decreed in terms thereof.

8. The Court has perused the Settlement Agreement dated 29.5.2015. The same has been signed by all the parties including the Builder and their respective counsels as also the learned Mediator. The terms and conditions of the settlement have been recorded in paras 1 to 15 of the Settlement Agreement.

9. As the counsels for the parties to the suit and counsel for the Builder jointly state that their clients have arrived at the aforesaid settlement of their own free will and volition and without any undue influence or coercion from any quarters, there appears no legal impediment in accepting the said settlement. All the parties to the Settlement Agreement shall remain bound by the terms and conditions thereof. Counsel for Mr. Wadhwa, the Builder states that his client shall abide by the terms and conditions of the Settlement and discharge all the obligations cast upon him thereunder.

10. The suit is accordingly decreed in terms of the settlement arrived at and recorded in the Settlement Agreement dated 29.05.2015, while leaving the parties to bear their own expenses.

11. The suit is disposed of alongwith the pending applications.
12. File be consigned to the record room.
13. The date fixed, i.e., 08.09.2015 stands cancelled.

HIMA KOHLI, J

JULY 08, 2015

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