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

+ CS(OS) 1840/2012

LALIT KAPUR

..... Plaintiff

Through: Mr. Atul Batra, Advocate with
Mr. Anuj Sehgal and Mr. Kundan Kumar
Mishra, Advocates

versus

VINOD KUMAR KAPUR & ORS

..... Defendants

Through: Mr. Aman Mehta, Advocate for D-1.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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12.08.2015

I.A. 2706/2013 (by the plaintiff u/O XII R 6 CPC)

1. Counsel for the plaintiff states that after filing of the present application, the plaintiff and the defendant No.1 have been able to arrive at a settlement that has been reduced into writing vide Memorandum of Settlement dated 08.01.2015, whereunder both parties have agreed to resolve their disputes in respect of the property, subject matter of the present suit.

2. In view of the submission made by the counsel for the plaintiff, the present application is disposed of.

CS(OS) 1840/2012 and I.A. 11490-92/2012 and 22182/2012

1. The plaintiff has instituted the present suit against his brother, defendant No.1, the successors-in-interest of his deceased sister, defendants No.2 to 4 and a tenant occupying a part of the suit premises, defendant No.5 praying inter alia for partition, declaration, possession, rendition of accounts etc.

2. The undisputed facts of the case are that Shri S.N. Kapur, the father of the plaintiff and defendant No.1 and the grandfather of the defendants No.3 and 4, was the owner of premises No.E-25, Mansarovar Garden, Delhi, measuring 220 sq. yards. Shri S.N. Kapur had expired on 11.06.2007. Before his death, he had executed a will datd 27.05.1994, whereunder he had bequeathed life estate in the suit property in favour of his wife, Smt. Pushpa Kapur and had clarified that upon her demise, the suit property shall devolve in equal shares in favour of the plaintiff and defendant No.1. After his death, he was survived by his widow, Smt. Pushpa Kapur and two sons, the plaintiff and defendant No.1 and a daughter, Smt. Kusum Lata Sachdeva. Smt. Kusum Lata Sachdeva had died intestate on 30.09.2007, leaving behind her husband and two sons (defendants No.2 to 4) as class I heirs. Thereafter, Smt. Pushpa Kapur, mother of the plaintiff and the

defendant No.1 had died intestate on 31.12.2010. She was survived by her sons, the plaintiff and the defendant No.1 and the defendants No.2 to 4 being the successors-in-interest of her daughter, Smt. Kusum Lata Sachdeva.

3. Summons were issued in the suit on 05.09.2012, whereafter appearance was entered by the learned counsel for the defendant No.1 on 26.11.2012. On 09.01.2013, on an application filed by the plaintiff, the name of the defendant No.5 was permitted to be deleted from the array of the parties. Simultaneously, the parties were referred to mediation, which did not succeed.

4. Pleadings qua the defendant No.1 are complete. Defendants No.2 to 4 were duly served with the summons in the suit but they had failed to appear. As a result, their right to file the written statement was closed vide order dated 09.01.2013. The defendants No.2 to 4 have not appeared in the suit even thereafter. Accordingly, the said defendants are proceeded against ex-parte.

5. Counsels for the plaintiff and the defendant No.1 state that during the pendency of the present proceedings, they have arrived at a settlement as recorded in the Memorandum of Settlement dated 08.01.2015, whereunder the parties have agreed that they are entitled

to 50% each share in the suit property and the built up portion shall remain in possession of the parties, as per their present status of occupation, i.e., the plaintiff shall remain in possession of the first floor and the defendant No.1 shall remain in possession of the ground floor. The other terms and conditions of the settlement have been set out in detail in the Memorandum of Settlement. The defendant No.2 is stated to have affixed his signatures on the Memorandum of Settlement as a witness thereto.

6. Counsels for the parties state that enclosed with the Memorandum of Settlement are the site plans of the ground floor, first floor and terrace above the first floor. The defendant No.1 has filed a copy of the Memorandum of Settlement dated 8.1.2015 alongwith the reply filed by him in response to I.A. 2706/2013. Both the parties state that the suit may be decreed in terms of the aforesaid settlement.

7. Counsel for the plaintiff states on instructions that his client does not wish to pursue the suit for the remaining reliefs of recovery of *mesne* profits, permanent and mandatory injunction, rendition of accounts etc.

8. In view of the submissions made by the counsels for the parties, the present suit is decreed in accordance with the terms and conditions contained in the Memorandum of Settlement dated 8.1.2015, marked as Ex.A. Decree sheet shall be drawn accordingly.

9. The suit is disposed of alongwith the pending applications while leaving the parties to bear their own expenses.

HIMA KOHLI, J

AUGUST 12, 2015

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