*   IN THE HIGH COURT OF DELHI AT NEW DELHI

\+   **CS(OS) 2425/2011**

Date of Decision: 24.09.2015

IN THE MATTER OF
DR. BHAGWANT SINGH KANWAR AND ANR ..... Plaintiffs
Through: Mr. Anil Kumar Verma, Advocate

versus

RAVINDER KAUR KANWAR AND ANR ....Defendants
Through: D-1 and D-1(a) are ex-parte.
Ms. Amrita Prakash, Advocate for D-2.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The plaintiffs have instituted the present suit praying *inter alia* for partitioning property No.P-1, Malviya Nagar, New Delhi, measuring 300 sq. yards and determining the shares of the parties to the suit. Further, they have prayed for a decree of declaration, declaring them and the defendants No.1 and 1(a) to be co-owners, having 1/6th share each in the suit property and for directions to the defendant No.2/L&DO to substitute their names in the records.

2. This order is in continuation of the order dated 04.8.2015. On 04.08.2015, counsel for the plaintiffs had stated that except for the defendants No.1 and 1(a), all the parties to the suit were agreeable to partitioning the suit premises by declaring that they were entitled to 1/6th undivided share each therein. It is relevant to note that the defendants No.1 and 1(a) did not participate in the suit

proceedings and were proceeded against ex-parte vide order dated 01.05.2013. After considering the averments made in the plaint, the testimony of the plaintiffs and the submissions made by the counsel for the plaintiffs, issue No.1 framed on 22.07.2013 was answered in favour of the plaintiffs and it was held that the plaintiffs and the defendants No.1 and 1(a) are entitled to a share in the suit premises and the shares of the parties were determined as below:-

(a)	Plaintiffs No.1(A) and 1(B) together	$1/6^{th}$ share
(b)	Plaintiffs No.2(a), 2(b) and 2(c) together	$1/6^{th}$ share
(c)	Plaintiff No.3	$1/6^{th}$ share
(d)	Plaintiffs No.4(a) and 4(b) together	$1/6^{th}$ share
(e)	Plaintiff No.5	$1/6^{th}$ share
(f)	Defendants No.1 and 1(a)	$1/6^{th}$ share

3. On the basis of preliminary decree passed above, the share of the plaintiffs No.1(A) and 1(B) was determined as one half each out of their $1/6^{th}$ undivided share in the suit premises. Similarly, the share of the plaintiffs No.2(a), 2(b) and 2(c) was determined as $1/3^{rd}$ each out of their $1/6^{th}$ undivided share and that of the plaintiffs No.4(a) and 4(b) was determined as half share each out of their $1/6^{th}$ undivided share in the suit premises.

4. After answering issue No.1 in the aforesaid manner, issue No.2 which was framed with regard to the feasibility of partitioning the suit premises by metes and bounds was taken up on 04.8.2015 and at the request of the counsel for the plaintiffs, a Local Commissioner was appointed to visit the suit premises and submit a report in that regard. The Local Commissioner has executed the commission and submitted a

report dated 14.09.2015, stating *inter alia* that before executing the commission, he had obtained the tracking report of the postal articles sent to the defendants No.1 and 1(a) by speed post and courier to ascertain as to whether they had received the same and the tracking report had confirmed that the articles were duly delivered at their addresses mentioned in the memo of parties.

5. The Local Commissioner had proceeded to visit the suit premises on 28.08.2015 and after inspecting the same, opined that considering the size of the plot and the nature of construction existing thereon, it would not be feasible to divide it by metes and bounds and the only course open is to sell the suit premises and divide the sale proceeds amongst the parties in proportion to their respective shares. In the alternate, the report suggested that one of the parties could be given an option to purchase the shares of the remaining parties.

6. In view of the report submitted by the Local Commissioner which has been accepted by the plaintiffs, issue No.2 is answered by holding that the suit premises is not capable of being partitioned by metes and bounds.

7. Counsel for the plaintiffs submits that none of the plaintiffs have the financial capacity to buyout the share of the others and therefore, the preliminary decree may be converted into a final decree and after the suit premises is mutated in favour of all the parties in the suit, as per their respective shares, they be permitted to take joint steps to dispose of the

same in the open market and share the sale proceeds in proportion to their shares therein.

8. On the last date of hearing, learned counsel for the defendant No.2/L&DO was directed to obtain instructions as to whether there is any impediment in mutating the suit premises jointly in favour of the plaintiffs and defendants No.1 and 1(a), in the context of issue No.3. Counsel for the defendant No.2/L&DO states on instructions that there is no impediment in undertaking the mutation of the suit premises jointly in favour of the plaintiffs and the defendants No.1 and 1(a), they being the legal heirs of Late Balwant Kaur, who is the recorded owner of the suit premises. She submits that even earlier hereto, when the plaintiffs had approached the L&DO with a request for bringing on record the legal heirs of Smt. Balwant Kaur, the said application had to be turned down only on account of the absence of the requisite affidavits by two of the legal heirs of the recorded lessee, namely, defendants No.1 and 1(a), who have been proceeded *ex-parte*.

9. Counsel for the plaintiffs states that in view of the clarification given by the counsel for the defendant No.2/L&DO, and after the preliminary decree passed on 04.8.2015 is converted into a final decree, directions may be issued to the defendant No.2/L&DO to mutate the suit premises jointly in favour of the plaintiffs and defendants No.1 and 1(a) as per their shares determined above. He further requests that since the defendants No.1 and 1(a) have been proceeded against ex-parte and despite service

of a notice on them by the Local Commissioner, they have elected not to participate in the proceedings, an officer of the Court may be appointed to appear before the competent authority for and on behalf of the defendants No.1 and 1(a), for taking all necessary steps to get the suit premises mutated in favour of all the parties in the record of the L&DO.

10. In view of the aforesaid submission, the preliminary decree passed in respect of the suit premises on 04.08.2015 is converted into a final decree. The defendant no.2/L&DO is directed to process the application of the parties for mutation of the suit premises jointly in their favour. Mr. Mukesh Kumar (Mobile No.9717394825), an officer of this Court is appointed to act for and on behalf of the defendants No.1 and 1(a) and appear along with the plaintiffs before the L&DO and other related government agencies for purposes of mutation/substitution of the parties to the suit as joint lessees in the records. Mr. Mukesh Kumar shall be authorized to take all the necessary steps for and on behalf of the defendants No.1 and 1(a) for mutation/substitution of their names and that of the plaintiffs in respect of the suit premises on the record, for which he shall be paid a fee of Rs.50,000/- to be borne by the plaintiffs, apart from the out of pocket expenses that may be incurred.

11. As counsel for the plaintiffs requests that after the suit premises is mutated in favour of all the parties to the suit in terms of the final decree, they may be left to explore the possibility of disposing of the suit premises on "as is where is" basis at the best possible price that it can

fetch in the open market and share the sale proceeds as per their entitlement, the suit is disposed of. In the event, the parties are unable to take joint steps to sell the suit premises within six months or there is any impediment created in its disposal for the apportionment of the sale proceeds amongst the parties as per their entitlement, then they shall be at liberty to seek execution of the judgment and decree, as per law. Decree sheet be drawn in terms of the order passed above. The parties are left to bear their own expenses.

12. The suit is disposed of.

(HIMA KOHLI)
JUDGE

SEPTEMBER 24, 2015
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