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

+ CS(OS) No.234/2007 & IA No.10680/2016 (for condonation of 41 days delay in filing affidavit of admission/denial).

JAGDISH SINGH Plaintiff

Through: Mr. Rajesh Rawal, Adv. for LR's Smt. Balbir Kaur, Mr. Onkar Singh and Ms. Balvinder Kaur.
Ms. Meenakshi Kalra, Adv. for LR Arvinder Pal Singh.

Versus

SURINDER PAL SINGH Defendant

Through: Mr. Mukesh Anand, Adv.

AND

CS(OS) No.500/2009, IA NO.3491/2009 (of the plaintiff under Order XXXVIII Rules 1&5 CPC) and IA No.483/2010 (of the plaintiff under Order XII Rule 6 CPC).

SURINDER PAL SINGH Plaintiff

Through: Mr. Mukesh Anand, Adv.

Versus

JAGDISH SINGH Defendant

Through: Mr. Rajesh Rawal, Adv. for LR's Smt. Balbir Kaur, Mr. Onkar Singh and Ms. Balvinder Kaur.
Ms. Meenakshi Kalra, Adv. for LR Arvinder Pal Singh.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.10.2016**

1. The counsel for the legal heirs, Smt. Balbir Kaur, Sh. Onkar Singh and Smt. Balvinder Kaur, of Shri Jagdish Singh has drawn attention to the order dated 23rd May, 2016 in CS(OS) No.500/2009 and has contended that Shri Surinder Pal Singh has not paid the costs of Rs.8,000/- till now.

2. The counsel for the Shri Surinder Pal Singh has in court handed over costs of Rs.8,000/- in cash.
3. Both suits concern property no. B-4/182, Safdarjung Enclave, New Delhi-110 029.
4. The counsels inform that (i) leasehold rights in the land *ad measuring* 200 sq. yds. underneath the said property, stated to be now comprising of ground, first and second floors, were granted in the joint names of Shri Jagdish Singh and Shri Surinder Pal Singh, who were brothers; (ii) at present the ground floor of the property is in possession of Shri Onkar Singh being the son of Shri Jagdish Singh and Smt. Balbir Kaur being the widow of Shri Jagdish Singh; the first floor and the second floor are in possession of Shri Surinder Pal Singh (the counsel for the legal heirs aforesaid of Shri Jagdish Singh states that Shri Surinder Pal Singh is in occupation of the first floor and Shri Arvinder Pal Singh another son of Shri Jagdish Singh who appears through Advocate is in occupation of the second floor of the property); (iii) CS(OS) No.234/2007 was filed by Shri Jagdish Singh for permanent injunction to restrain Shri Surinder Pal Singh from alienating, encumbering or parting with possession of the first floor of the property – there is an order of interim injunction in the said suit; (iv) CS(OS) No.500/2009 has been filed by Shri Surinder Pal Singh claiming partition of the property; and, (v) the deceased Jagdish Singh in his written statement in CS(OS) No.500/2009 has not disputed that Shri Surinder Pal Singh and Shri Jagdish Singh are co-owners in equal share of the property.
5. Though in the light of the aforesaid, a preliminary decree for partition in CS(OS) No.500/2009 should have been passed immediately but

the suit has somehow remained pending till now.

6. The counsel for Smt. Balbir Kaur, Sh. Onkar Singh and Smt. Balvinder Kaur, heirs of Shri Jagdish Singh, states that Shri Jagdish Singh has left a Will bequeathing his 50% share in the property in favour of Shri Onkar Singh.

7. The counsel for Shri Arvinder Pal Singh states that Shri Arvinder Pal Singh disputes the said Will set-up by Shri Onkar Singh and claims that the second floor of the property in his possession is his share of the estate of Shri Jagdish Singh.

8. The counsel the Onkar Singh, Smt. Balvinder Kaur and Smt. Balbir Kaur states that Shri Jagdish Singh in his lifetime has filed a suit for recovery of possession of the second floor from Shri Arvinder Pal Singh and the said suit is also pending.

9. Be that as it may, in view of the aforesaid position, as far as CS(OS) No.500/2009 is concerned, a preliminary decree for partition on admissions is liable to be passed and is passed declaring the deceased Jagdish Singh and Shri Surinder Pal Singh to be having 50% share each in the property.

10. Decree sheet be drawn up.

11. As far as CS(OS) No.234/2007 is concerned, the same is disposed of by directing that neither of the parties shall, till the final decree for partition, alienate, encumber or part with possession of the property or any part/share therein.

12. Decree sheet in CS(OS) No.234/2007 be drawn up, leaving the parties to bear their own costs.

13. As far as the share of Shri Jagdish Singh is concerned, the distribution thereof between the heirs of Shri Jagdish Singh shall be taken up depending upon the outcome of the suit aforesaid between the legal heirs of Shri Jagdish Singh.

14. The counsels state that instead of appointing a Court Commissioner to explore the possibility of division of the property by metes and bounds, the parties be referred to mediation to explore the possibility of amicable settlement of all the disputes between the parties.

15. The parties to appear before the Mediation Cell of this Court on 4th November, 2016 at 1415 hours.

16. List awaiting report before the Court on 15th December, 2016.

17. In terms of above, all pending applications also stand disposed of.

RAJIV SAHAI ENDLAW, J.

OCTOBER 18, 2016

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