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

+ **CS(OS) 722/2014 and I.A. 22740/2014, 4601/2014, 4602/2014**

RAJNESH PATHAK Plaintiff

Through: Mr. Shekhar Dasi, Advocate

versus

KARUNA LAKHANPAL & ORS Defendants

Through: Mr. Sonal Jain, Advocate with
Ms. Heena Sharma, Advocate for D-1 and D-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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01.09.2016

1. The present suit has been instituted by the plaintiff praying *inter alia* for a decree of declaration, partition, rendition of accounts and mandatory injunction.
2. The first relief in the plaint is for passing a decree of declaration against the defendants declaring the plaintiff and the defendant No.3 as joint owners of half of the premises bearing No.M-73, Greater Kailash-II, New Delhi, as shown in red colour in the site plan enclosed with the plaint.
3. Counsel for the defendants No.1 and 2 states at the outset that his clients are not laying any claim to any part of the aforesaid property, which

is the subject matter of the will dated 02.02.2013 executed by late Shri Chaman Lal Pathak, father of the parties, on the condition that the plaintiff be called upon to state that he is not disputing the legality and validity of the said will.

4. Counsel for the plaintiff states that his client has duly accepted the execution of the will dated 2.2.2013, by late Sh. Chaman Lal Pathak.

5. In view of the fact that the defendants No.1 and 2 do not have any objection to the grant of the relief at prayer clause (a) of the plaint, a decree of declaration is passed, declaring that the plaintiff and the defendant No.3 are joint owners of half of the premises bearing No.M-73, Greater Kailash-II, New Delhi, as shown in red colour in the site plan enclosed with the plaint.

6. At prayer (b), the plaintiff seeks a decree of mandatory injunction against the defendants No.1 and 2, directing them to hand over the original sale deed in respect of premises bearing No.M-73, Greater Kailash-II, New Delhi, owned by late Shri Chaman Lal Pathak.

7. Counsel for the defendants No.1 and 2 denies that the title deeds of the suit premises are in the possession of his clients and submits it is for the plaintiff to take necessary steps in this regard.

8. Counsel for the plaintiff states that in view of the statement made by the counsel for the defendants No.1 and 2, as above he shall take necessary steps for reconstruction of the title deeds, as per law.

9. A part of the relief prayed for in prayer clause (b) of the plaint is for

directions to the defendants No.1 and 2 to disclose the status of the movable/immovable properties in India and abroad owned by the parents of the parties, as per the annexures enclosed with the plaint.

10. Counsel for the plaintiff states that as probate petitions in respect of the wills executed by the parents of the parties are pending adjudication in the Bombay High Court and the plaintiff is participating in the said proceedings, he does not wish to press the aforesaid relief.

11. Coming next to the relief prayed for at prayer clause (c) of the plaint, learned counsel for the plaintiff states that in view of the fact that prior to the institution of the present suit, the husband of the defendant No.1 (executor of the will of late Shri Chaman Lal Pathak) had filed a probate petition in the Bombay High Court and the defendant No.2 has filed a probate petition in respect of the will of late Smt. Nirmala Pathak dated 24.08.2012 that is also pending before the Bombay High Court, he does not wish to proceed any further with the reliefs prayed for at prayer clause (c), for the present.

12. The last relief prayed for by the plaintiff is for a decree of partition in respect of property bearing No.B-701, Amar Apartments, Thakur Complex, Kandivali (East), Mumbai.

13. Counsel for the defendants No.1 and 2 states that the defendant No.1 and her husband are the owners of the aforesaid premises. The share certificates in respect of the said flat were issued in favour of the defendant No.1 on 03.11.2011 and the sale deed in respect of the said flat was executed in favour of the defendant No.1 and her husband on 31.03.2000. Learned

counsel states that the said flat is not even the subject matter of the will executed by the mother of the parties.

14. Counsel for the plaintiff reserves his right to seek his legal remedies against the defendant No.1, in respect of the aforesaid flat, on the decision of the aforesaid two probate proceedings pending in the Bombay High Court. Leave as prayed for is granted.

15. No other relief has been prayed for in the present suit.

16. Accordingly, with the consent of the parties, the suit is partly decreed in terms of para 5 of the order passed hereinabove. Decree sheet be drawn accordingly.

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

SEPTEMBER 01, 2016

rkb/ap

HIMA KOHLI, J