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

+ RFA 145/2015 & CMs No.4061/2015 (for stay) & 16498/2015 (cross-objections of R-5(iii))

YOGESH ARORA Appellant
Through: Appellant-in-person.

Versus

BALDEV RAJ CHUCHRA & ORS Respondents
Through: Mr. Ritvick Navet, Adv. for Mr. Rajat Navet, Adv. for R-1.
Mr. Vivek Malhotra, Adv. for R-2.
Mr. Jeevesh Nagrath and Mr. Baldev Kumar Singh, Adv. for R-5(ii).
Mr. Puneet Taneja, Mr. Birender Choudhary and Ms. Shaheen, Adv. for R-5(iii).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.03.2016**

1. The appeal impugns the final decree dated 1st November, 2014 of partition of property No.IX/1606-07, Pataudi House, Darya Ganj, New Delhi holding that the property cannot be partitioned by metes and bounds and confirming the preliminary decree for partition.

2. It is obvious that the order dated 1st November, 2014 as well as the final decree drawn up are faulty. A final decree in a suit for partition is not to confirm the preliminary decree as has been done. If the learned Additional District Judge (ADJ) has reached the conclusion that the property

cannot be partitioned by metes and bounds, the learned ADJ ought to have passed a final decree for partition by sale of the property and distribution of sale proceeds as per the shares declared in the preliminary decree.

3. Though the parties ought to have applied to the learned ADJ for correction in this regard and have not applied but I am of the view that this Court need not to go into legalese and not deprive the parties of the fruit of the litigation which they have been fighting since the year 1996. Otherwise, it is obvious that the decree is for partition of property by sale thereof and distribution of sale proceeds as per shares declared in the preliminary decree.

4. The counsel for the respondent No.5(ii) draws attention to the order dated 4th September, 2013 of dismissal of RFA No.291/2013 preferred by the appellant herein against the preliminary decree for partition earlier passed.

5. Once the preliminary decree for partition is not under challenge, it cannot be disputed that the property cannot be divided by metes and bounds. The property is informed to be constructed over land admeasuring 145 sq. yards and as per the preliminary decree has to be divided between the appellant and six respondents, with the appellant and the respondents No.1 to 4 having 1/6th share each and the respondents No.5(ii) and 5(iii) having 1/18th share each. It is also the contention of the counsel for the respondent No.5(ii) that the final decree impugned in this appeal is in pursuance to a consent order and which consent the appellant is now denying.

6. The counsel for the respondent No.5(ii) also states that though the respondent No.5(iii) has preferred cross-objections in this appeal but he concedes that 1/18th share of the respondent No.5(i) Dr. P.L. Chaudhary being the mother of respondents No.5(ii) & 5(iii) be kept in a fixed deposit, subject to the decision of the *inter se* litigation between the respondents No.5(ii) & 5(iii).

7. The counsel for the respondent No.5(iii) is satisfied with the said aspect.

8. Accordingly, the appeal is dismissed, however, clarifying that as far as 1/18th share of the respondent No.5(i) Dr. P.L. Chaudhary is concerned, the same shall be kept in a fixed deposited, subject to the outcome of CS(OS) No.663/2014 pending in this Court. The respondents No.5(ii) & 5(iii) may also obtain appropriate orders of the bench in which CS(OS) No.663/2014 is pending with respect to the manner in which the fixed deposit is to be made and dealt with.

RAJIV SAHAI ENDLAW, J.

MARCH 18, 2016

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