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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 567/2008 & IA No.10121/2016 (of the plaintiffs for consideration of the objection / suggestion to the report of the Local Commissioner dated 19th May, 2016)

SHRI SURYA KUMAR PANDE & ORS. Plaintiffs

Through: Ms. Rashmi Verma, Adv.

Versus

SHRI HIRDESH KUMAR & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.11.2016

1. The three plaintiffs viz. Surya Kumar Pande, Geeta Dwivedi & Usha Dwivedi filed this suit for partition and rendition of accounts. Partition was claimed of the properties as described in para 6 of the plaint as under:

“6. That to the best of knowledge of the Plaintiffs their parents left behind following immovable properties:-

Immovable Properties:-

- i) House No.E-232, Greater Kailash-II, New Delhi-110 048.
- ii) Commercial plot No.504, Chiranjiv Tower, 43, Nehru Place, New Delhi.
- iii) Commercial shop bearing No.N-10, Stall, Greater Kailash-I Market, New Delhi.
- iv) Plot No.SE-14, Shastri Nagar, Ghaziabad, Uttar Pradesh.
- v) Plot at Faridabad, Haryana measuring 500 sq. mt. and further particulars of the same are not known to the Plaintiffs.
- vi) Ancestral properties, agricultural land, residential properties at Sahajanpur.

Movable Properties:-

- i) Pension Account at Bank of India, M Block Market, G.K.-II, New Delhi.
- ii) Saving Bank Accounts, Fixed Deposits, shares, Indra Vikas Patra, Kisan Vikas Patra, post office deposits, goods in lockers, jewellery in possession of Defendant Nos.1&2 joint account in the name of the Plaintiff No.1 and the Defendant No.1 in respect of which proceeds from the inherited properties are to be deposited and which was always operated by the Defendant No.1.

The estimated market value of the above mentioned assets is Rs.20,00,00,000/- (Rupees Twenty Crores only).”

2. Sh. Hirdesh Kumar, Sh. Ajit Kumar Pande and Smt. Nisha Dube were impleaded as the defendants to the suit.
3. It was the case in the plaint that the plaintiff no.1 and the defendants no.1&2 are the sons and the plaintiffs no.2&3 and the defendant no.3 are the daughters of late Sh. Uma Shankar Pande and Smt. Prem Vati Pande, both of whom died intestate leaving the parties to the suit as their only natural heirs and the properties aforesaid.
4. The suit was entertained and vide *ex parte* ad-interim order dated 28th March, 2008, the defendants restrained from creating any third party interest in respect of the suit property.
5. Defendant no.3 was proceeded *ex parte* on 21st August, 2008.
6. On 13th July, 2009, after hearing the counsel for the plaintiffs and the counsel for the defendants no.1&2, a preliminary decree for partition of the properties as described in para 6 of the plaint supra was passed, finding the three plaintiffs and the three defendants to be having 1/6th share each therein

and since the plaintiff no.3 Smt. Usha Dwivedi had relinquished her share in the properties in favour of the plaintiff no.1 Surya Kumar Pande, the share of the plaintiff no.1 in the said properties was declared by way of the preliminary decree for partition as $\frac{1}{3}^{\text{rd}}$ and the share of the plaintiff no.2 Geeta Dwivedi and of the three defendants was declared as $\frac{1}{6}^{\text{th}}$ each.

7. A Court Commissioner was appointed to ascertain whether properties could be partitioned by metes and bounds.

8. The defendants did not pay their share of fees of the Court Commissioner and vide order dated 20th October, 2009, the Court Commissioner was directed to proceed on the plaintiffs' paying the share of the defendants also of the fee of the Court Commissioner.

9. The Court Commissioner filed a report.

10. The plaintiff no.1 filed IA No.14690/2011 for amendment of the plaint and notice thereof was issued to the defendants. None appeared for the defendants and vide order dated 17th August, 2012, the said application was allowed. By the said amendment, the plaintiffs substituted the earlier para 6 of the plaint with the following para 6 in the plaint:

“6. That to the best of knowledge of the Plaintiffs their parents left behind following immovable properties:-

Immovable Properties:-

- i) House No.E-232, Greater Kailash-II, New Delhi-110 048.
- ii) Commercial plot No.504, Chiranjiv Tower, 43, Nehru Place, New Delhi.
- iii) Commercial shop bearing No.N-10, Stall, Greater Kailash-I Market, New Delhi.
- iv) Plot No.SE-14, Shastri Nagar, Ghaziabad, Uttar Pradesh.

- v) Plot bearing No.B-41, Sector-11, Faridabad Haryana measuring.
- vi) Agricultural land at Sahajanpur, Village, Nagarpal, Block-Bhawalkhera, District Shahajaanpur stood mutated in their names jointly.

Movable Properties:-

- (i) Joint account, pension amount and FDRs with Bank of India, M-Block Market, Grater Kailash-II, New Delhi in the name of Smt. Prem Wati Wd/o (sic W/o) Late Uma Shankar Pande in the name of Shri Um Shankar Pande, Prem Wati and Ajit Kumar.
- (ii) S.B. A/c. No.8753 with the Bank of India, Greater Kailash-II, New Delhi in the name of Smt. Premwati, Hirdesh Kumar and Shri Ajit Kumar.
- (iii) S.B. A/c. No.603710100008451 with Customer I.D. No.000735950 with the Bank of India, Greater Kailash-II, New Delhi in the name of Smt. Premwati.
- (iv) S.B. A/c. No.8451 with the Bank of India, Greater Kailash-II, New Delhi in the name of Mrs. Premwati.”

11. Accordingly, vide order dated 17th August, 2012 fresh directions were issued to the Court Commissioner already appointed.

12. Vide order dated 1st March, 2013, the *ex parte* ad-interim order dated 28th March, 2008 was confirmed.

13. The counsel for the plaintiffs states that there are three reports of the Court Commissioner before this Court and the final report is to the effect that the properties are incapable of division by metes and bounds and to which the plaintiffs have filed objections contending that the same can be so divided.

14. The preliminary decree for partition which was found to have been passed in the context of the plaint as originally filed is not found to have been amended after the plaint was permitted to be amended post the preliminary decree.

15. The preliminary decree for partition dated 13th July, 2009 is now ordered to be rectified in terms of the amended plaint verified on 12th September, 2011.

16. The amended / rectified preliminary decree for partition be prepared accordingly.

17. The counsel for the plaintiffs has been heard on her objections to the report of the Court Commissioner.

18. The counsel for the plaintiffs proposes that the property no.E-232, Greater Kailash-II, New Delhi which comprises of two floors be divided between the plaintiff no.1 on the one hand and the defendants no.1 to 3 on the other hand, with the ground floor thereof which is already in possession of defendants no.1&2 falling to the share of the defendants no.1 to 3 and the first floor thereof which is in possession of the plaintiff no.1, together with roof rights including right of further construction thereon falling to the share of the plaintiff no.1. It is stated that the plaintiff no.2 also has since relinquished her 1/6th share in the properties in favour of the plaintiff no.1 and copy of the relinquishment deed is filed along with the report of the Court Commissioner. It is again stated that the plaintiff no.2 has executed three relinquishment deeds relinquishing share in three only of the properties in favour of plaintiff no.1.

19. The plaintiff no.1 has however not sought any amendment of the preliminary decree for partition.
20. Merely because photocopy of a relinquishment deeds are filed along with the report of the Court Commissioner would not amend the preliminary decree already passed. Moreover, there is no clarity also on the subject.
21. The counsel for plaintiffs now seeks adjournment to take requisite steps.
22. The plaintiffs having chosen not to take any steps for having the preliminary decree modified, cannot now seek adjournment and keep the suit pending.
23. I have considered the objections of the plaintiffs to the report of the Court Commissioner to the effect that the properties are incapable of partition by metes and bounds.
24. Since the defendants are not appearing, it is felt that no partition by metes and bounds of the properties is possible. Even otherwise, the suggestion of the counsel for the plaintiffs, of the defendants no.1 to 3 together owning the ground floor of the property and the plaintiff no.1 owning the upper floors of property no. E-232, Greater Kailash-II, New Delhi is not found to be an equitable suggestion. Moreover, once the shares of each of the parties have been declared independently, this Court cannot of its own and for the sake of convenience of the plaintiff no.1 club the defendants together for the purpose of division of the properties by metes and bounds and each of the parties has to be given his / her respective share in the properties.

25. The only solution left is to pass a final decree for partition by sale of the properties and distribution of the sale proceeds amongst the parties as per their respective share declared in the preliminary decree and with permission to the parties to, if so desire, hold *inter se* bidding and / or participate in the sale themselves and if any of the parties is the highest bidder, with liberty to the said party to buy the share of the others.

26. Accordingly, a final decree for partition of the properties, by sale thereof and by distribution of sale proceeds amongst the parties as per their shares declared in the preliminary decree for partition is passed, with liberty to the parties to if so desire first resort to *inter se* bidding and to participate in the sale and if their bid is the highest, to purchase the share of the others.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 08, 2016

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