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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.P. No.41/2016 & EA No.728/2016 (objections of the JD-2).
ACHRAJ LAL LAMBA Decree Holder
Through: Mr. Arvind Sharma, Adv.

versus

TILAK RAJ LAMBA & ANR Judgement Debtors
Through: Mr. Ashraf Yusuf Khan, Adv. for
JD-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.11.2016**

1. Execution is sought of a decree dated 7th May, 2015 in CS(OS) No.2288/2009 for partition of immoveable property.
2. The decree is as under:-

“This suit coming on this day for final disposal before this Court in the presence of counsel for the plaintiff while defendant Nos.1&2 were proceeded ex-parte vide order dated 24.01.2011 and defendant Nos.4,5&6 were proceeded ex parte vide order 02.05.2012 and none appeared on behalf of defendant No.3 as aforesaid; it is ordered that a decree be and the same is hereby passed by converting the preliminary decree dated 16.10.2014 into a final decree (copy of order dated 07.05.2015 enclosed).

It is further ordered that if the parties are unable to work out a settlement as to the mode of partition, then they shall be at liberty to seek execution of the decree in accordance with law.

It is lastly ordered that there shall be no order as to costs.”

3. Though notice of the execution petition was ordered to be issued and the counsel for the judgment debtor no.2 appears and the judgment debtor no.2 has also filed objections but as would be obvious from the above, the final decree converts the preliminary decree for partition into a final decree for partition; it only means that the shares of the parties in the property are declared and no more.
4. The final decree for partition can be either of partition of the property by metes and bounds amongst the shareholders or of sale of the property and distribution of the sale proceeds in accordance with the shares declared in the preliminary decree or by payment of owelty by one of the parties to the other.
5. There is no such decree in the present case and it is not understandable as to why the plaintiff has filed execution and in what mode the assistance of this court is required for executing the decree.
6. The plaintiff in the execution petition has sought the relief of auctioning of the property.
7. However, without there being a decree for sale of the property, there can be no execution by sale of the property.
8. The objections filed by the judgment debtor no.2 are also similarly misconceived.
9. The execution petition is dismissed.

RAJIV SAHAI ENDLAW, J

NOVEMBER 02, 2016

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