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

+ **CS(OS) 284/2016 & IA No.7026/2016 (u/O 39 R-1&2 CPC)**

SMT. POOJA AGGARWAL Plaintiff
Through: **Ms. Vandana Bhatnagar, Adv.**

Versus

SHRI ASHISH GUPTA & ORS Defendants
Through: **Mr. Dinesh Garg and Ms. Rachna Aggarwal, Adv.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.07.2016

1. A preliminary decree in this suit for partition of property No.C-61, Neeti Bagh, New Delhi-110049 was passed on 31st May, 2016.
2. The counsel for the plaintiff and the counsel for the three defendants state that the plaintiff and the defendants have attempted to partition the property by metes and bounds but have been unable to and have decided that the said property be sold and the sale proceeds be shared in accordance with the preliminary decree. They thus seek a final decree for partition of sale of the property and distribution of the sale proceeds in accordance with the preliminary decree.
3. On enquiry, it is informed that the property is lying vacant and lying half demolished and thus no one is in physical possession thereof and the property has been agreed to be sold on 'as is where is basis'.

4. Accordingly, a final decree for partition of property No.C-61, Neeti Bagh, New Delhi by sale of the property and by distribution of sale proceeds amongst the parties in the proportion of their respective shares as per the preliminary decree is passed.

5. The counsel for the defendants has referred to *Sushil Kumar Gupta Vs. Prem Gupta* 2013 (135) DRJ 341 (DB) laying down that a decree for partition of property by sale is not required to be engrossed on the stamp paper, as stamp duty is payable on the sale deed to be executed.

6. The counsels further state that it has been agreed that if the parties are unable to sell the property with mutual consent within six months, either party shall be entitled to execute the decree.

7. The defendant No.3 Ms. Akshita Gupta is the daughter of the defendant No.1 Mr. Ashish Gupta and is stated to be a minor, about 15 years of age.

8. The counsel for the defendants states that he has satisfied himself that the defendant No.1 Mr. Ashish Gupta, being the father of the minor defendant No.3 Ms. Akshita Gupta, has no interest adverse to the minor and has been acting and will act in the best interest of the minor and seeks that the defendant No.1 Mr. Ashish Gupta be authorised by this Court to execute the sale deed on behalf of the minor defendant No.3 Ms. Akshita Gupta as well.

9. I am of the view that relegating the defendant No.1 to the Guardianship Court for obtaining permission for executing the sale deed on behalf of his minor daughter defendant No.3 Ms. Akshita Gupta may put the sale of the property in jeopardy and create further complications. I am,

on the basis of the statement aforesaid of the counsel for the defendants and which I do not find any reason to disbelieve, satisfied that the defendant No.1, being the father of the minor defendant No.3, is a fit person to execute the sale deed on behalf of the minor defendant No.3.

10. Accordingly, I further order that the sale of the property be effected by the execution of the sale deed of the share of the minor defendant No.3 Ms. Akshita Gupta on her behalf by her father Mr. Ashish Gupta son of Mr. Anand Sarup Gupta, on the condition that the entire sale consideration of the defendant No.3 Ms. Akshita Gupta's $1/6^{\text{th}}$ or 16.666% share be kept in a maximum interest bearing fixed deposit with a nationalised bank for a period till one year after her attaining majority or may be utilised for buying another property in the name of the minor defendant No.3 Ms. Akshita Gupta and for no other purpose.

11. The counsel for the defendants on behalf of the defendant No.1 Mr. Ashish Gupta gives undertaking to this Court to the said effect and which undertaking is accepted and the defendant No.1 is ordered to be bound thereby.

12. The plaintiff and the defendants No.1&2 further undertake to this Court to not create any other impediment in sale of the property and which undertaking is also accepted.

13. Decree sheet be drawn up with this order forming part of the decree sheet.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2016/bs..
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