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

+ CS(OS) 2554/2010 and I.A. No.13013/2015 (under Order 7 Rule 11 CPC by defendants)

ROOPA KHANNA

..... Plaintiff
Through: Mr. Ajay Kapur, Senior Advocate with Ms.
Ritika Ahuja, Advocate.

versus

ANIL VARMA & ANR

..... Defendants
Through: Mr. Anupam Srivastava, Advocate with Ms.
Sharmistha Ghosh, Advocate and Mr.
Abhishek Yadav, Advocate.

+ CS(OS) 116/2011 and I.A. No.6179/2015 (under Order 7 Rule 11 CPC by defendant)

SUNIL VARMA & ANR

..... Plaintiffs
Through: Mr. Anupam Srivastava, Advocate with Ms.
Sharmistha Ghosh, Advocate and Mr.
Abhishek Yadav, Advocate.

versus

ROOPA KHANNA

..... Defendant
Through: Mr. Ajay Kapur, Senior Advocate with Ms.
Ritika Ahuja, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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17.02.2016

1. The suits were argued at length not only for the purpose of framing of issues but on the two applications under Order 7 Rule 11 of Code of Civil Procedure, 1908 (CPC). In fact, this Court also more or less

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completed dictating the order of dismissing the application under Order 7 Rule 11 CPC in CS(OS) No.2554/2010 being I.A. No.13013/2015 besides considering the requirement of framing of issues in both the suits inasmuch as the suits were listed for framing of issues today.

2. I am happy to note that counsel for the parties have in terms of admitted facts in the present cases and the pleadings of the two suits have agreed and accordingly both the suits are disposed of in terms of the following consent order:-

(i) Plaintiff in CS(OS) No.2554/2010 namely Smt. Roopa Khanna, and who is the sister of the two defendants in this suit being her two brothers Sh. Anil Varma and Sh. Sunil Varma (since deceased now represented by his legal heirs), is declared as owner of $1/3^{\text{rd}}$ share in the first floor flat bearing no.3/24, Shanti Niketan, New Delhi (hereinafter referred to as 'suit property) as also of the additional $1/3^{\text{rd}}$ share out of the $2/3^{\text{rd}}$ share of the mother in the suit property. Plaintiff therefore is declared to be the owner of $5/9^{\text{th}}$ share in the suit property.

(ii) Defendant nos.1 and 2 in CS(OS) No.2554/2010, and who are the plaintiffs in CS(OS) No.116/2011, are declared to be the owner of

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remaining $4/9^{\text{th}}$ share with the branch of Sh. Sunil Varma (since deceased and represented by legal heirs) will be the owner of $2/9^{\text{th}}$ share in the property and Sh. Anil Varma will be the owner of $2/9^{\text{th}}$ share in the suit property.

(iii) A preliminary decree is accordingly passed in CS(OS) No.116/2011 in terms of the shares of Smt. Roopa Khanna being $5/9^{\text{th}}$ share and Sh. Anil Varma having $2/9^{\text{th}}$ share and the estate of Sh. Sunil Varma having $2/9^{\text{th}}$ share of the property being the first floor of 3/24, Shanti Niketan, New Delhi.

3. CS(OS) No.2554/2010 will stand accordingly decreed not only for the declaration as sought by the plaintiff with respect to her share which has been agreed to be $5/9^{\text{th}}$ share but the plaintiff will also be first offered a right of pre-emption of $2/9$ share of Sh. Anil Varma and $2/9^{\text{th}}$ share of estate of Sh. Sunil Varma, of course, as per the market value as on the date when the total of $4/9^{\text{th}}$ share of suit property of defendants in CS(OS) No.2554/2010 is sold or part of it is to be sold or either of the shares is to be sold ie in case, either of Sh. Anil Varma or any other legal heir of Sh. Sunil Varma want to sell the shares which have fallen to them, the first right of

pre-emption will be of the sister Smt. Roopa Khanna. Detailed modalities of terms including time of payment of price by Smt. Roopa Khanna to Sh. Anil Varma and legal heirs of late Sh. Sunil Varma need to be fixed today inasmuch as that aspect will arise on the date when Sh. Anil Varma or legal heirs of late Sh. Sunil Varma want to sell their respective shares in the suit property. The method and manner of payment of sale consideration by Smt. Roopa Khanna to either Sh. Anil Varma and/or the legal heirs of late Sh. Sunil Varma will be an aspect which will either be mutually decided or will be in terms of the provisions of the Punjab Pre-Emption Act as applicable to Delhi though strictly the said Act does not apply to the premises in question inasmuch as the said Act only applies to the specific areas in the walled city of the Delhi as stated in the said Act.

4. In view of the passing of the preliminary decree as stated above and giving a right of pre-emption to the sister Smt. Roopa Khanna under Section 22 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') an injunction order follows that neither Sh. Anil Varma nor the legal heirs of deceased Sh. Sunil Varma will sell their shares in the suit property unless first offering their shares to Smt. Roopa Khanna pursuant to Smt.

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Roopa Khanna's right of pre-emption under Section 22 of the Act.

5. Accordingly, both the suits are disposed of firstly by giving the necessary declaration and injunctions to Smt. Roopa Khanna in terms of the prayer clauses of Smt. Roopa Khanna in CS(OS) No.2554/2010, and passing a preliminary decree in CS(OS) 116/2011 as stated above.

6. Simultaneously it is observed that if for some reason Smt. Roopa Khanna fails to exercise her rights of pre-emption under Section 22 of the Act, at that stage, the plaintiffs in CS(OS) No.116/2011 can revive their suit for taking further steps in terms of the preliminary decree passed today declaring the shares of the parties.

7. It is also further agreed, and which will form part of the decree to be drawn up by this Court, that, for the shares of Sh. Anil Varma and the share falling to the estate of Sh. Sunil Varma by Smt. Roopa Khanna will exercise her rights and obligations of pre-emption under Section 22 of the Act within nine months from today's date with the fact that Smt. Roopa Khanna within a period of three months from today will make an offer in writing to the defendants or their counsel appearing in the suits today in this Court as to the price at which Smt. Roopa Khanna wants to purchase the



2/9th share of Sh. Anil Varma and 2/9th share falling to the estate of late Sh. Sunil Varma. On receiving the offer by the defendants to the extent of their shares, the defendants will give their counter offer with further clarification that none of the parties are entitled to give any offer or counter offer which is below the circle rates fixed by the competent authority for the area in which the suit property is situated.

8. Any other issue with respect to exercise, valid exercise, failing to exercise etc of the pre-emption right will be subject matter of appropriate independent proceedings.

9. Suits are accordingly disposed of and a decree be drawn up by granting the reliefs of declarations and injunctions to the plaintiff in CS(OS) No.2554/2010 and passing a preliminary decree in favour of the parties in terms of the shares as stated above in CS(OS) No.116/2011. Parties are left to bear their own costs.


VALMIKI J. MEHTA, J

FEBRUARY 17, 2016

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