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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1080/1998 & IA No.6511/2017 (under Order XXIII Rule 3 of the CPC).

NARENDRA SHARMA Plaintiff
Through: Mr. Rajat Navet and Mr. Kushagra Pandit, Advs.

versus

ASHOK SHARMA & ORS. Defendants
Through: Mr. D.R. Jain, Adv. for D-1,2,3,5,6&7.
Mr. Virendra Singh, Adv. with daughter of Mr. R.P. Sharma as Attorney.
Mr. A.K. Jain, Adv. for D-14&15.

AND

CS(OS) No.1246/1999
OM DUTT SHARMA Plaintiff
Through: Mr. Rajat Navet and Mr. Kushanga Pandit, Advs.

versus

RADHEY SHYAM SHARMA & ORS. Defendants
Through: Mr. A.K. Jain, Adv. for D-1.
Mr. Mahtab Singh, Adv. for D-14&15.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.05.2017

IA No.6511/2017 (u/O XXIII R-3 CPC) in CS(OS) No.1080/1998

1. Though only IA No.6511/2017 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) in CS(OS) No.1080/1998 was listed today but finding that the compromise covered CS(OS) No.1246/1999 also, the file of CS(OS) No.1246/1999 has also been requisitioned and has been got listed and is before the Court today.

2. Both CS(OS) No.1080/1998 and CS(OS) No.1246/1999 are for partition of properties standing in the name of late Shri Nathu Ram Subedar. The parties are the heirs of the said late Shri Nathu Ram Subedar.
3. The counsel for the plaintiff in CS(OS) No.1080/1998 and the counsel for the defendants no. 1,2,3,5,6&7, counsel for the defendant no.13, counsel for the defendants no.14&15 support IA No.6511/2017 and state that CS(OS) No.1080/1998 be decreed in terms thereof. They also state that the application is signed by all the parties to the suit and is accompanied by affidavits of all the parties to the suit. It is further stated that the plaintiff in CS(OS) No.1080/1998 is also the attorney of defendants no.9 to 12 and 16 to 19 (defendant No.4 Ajay Bhardwaj is reported to be 'deceased' and none has been substituted in his place).
4. I have perused the compromise arrived at between the parties and find the same to be lawful.
5. I have however enquired from the counsels as to who will bear the Stamp Duty for the decree for partition by metes and bounds claimed with respect to house no.133, Hari Nagar Ashram, New Delhi.
6. The counsels state that the Stamp Duty shall be borne equally by the parties getting a share in that property.
7. On enquiry, it is further stated that no decree for partition by metes and bounds is required *inter se* between the parties who have together opted to take part 'A' and part 'B' respectively of house no.133, Hari Nagar Ashram, New Delhi.
8. Accordingly, the application is allowed and disposed of.

CS(OS) No.1080/1998

9. The counsels state that the defendant no.8 Om Dutt Sharma has died and an application for substitution of his legal heirs has been filed but the same is listed before the Joint Registrar.

10. The counsel for the plaintiff has handed over a copy of the application which is taken on record.

11. The cause of action is found to survive and the application has been filed within time.

12. On oral request of the counsel for the plaintiff, Rameshwari Devi, Vijay Sharma, Anand Sharma, Narender Sharma and Rita Sharma being the only natural heirs of late Shri Om Dutt Sharma are substituted in place of defendant no.8 Om Dutt Sharma in the suit.

13. Amended memo of parties is stated to have been filed along with the application and the same be taken on record.

14. In accordance with the compromise arrived at between the parties, a preliminary decree for partition of house no.133, Hari Nagar Ashram, New Delhi is passed by declaring Radhey Shyam Sharma, Ashok Sharma, Narendra Sharma and Rajender Prashad Sharma only to be having equal share therein.

15. Decree sheet be drawn up.

16. A final decree for partition of house no.133, Hari Nagar Ashram, New Delhi is also passed, by partition of the property by metes and bounds in terms of the application and the site plan Annexure-‘A’ appended thereto.

17. Decree sheet be drawn up on payment of requisite Stamp Duty.
18. The parties to bear their own costs.
19. As far as the other properties subject matter of the suit are concerned, with the consent of the parties, the title thereto is agreed to be governed by the document dated 18th July, 1988, Annexure-‘B’ to the application, accepted by all the parties to be the validly executed last Will of late Shri Nathu Ram Subedar and the document dated 16th August, 1989 Annexure-‘C’ to the application agreed by all the parties to be validly executed Gift Deed by late Shri Nathu Ram Subedar with respect to property subject matter thereof in favour of Radhey Shyam Sharma.
20. A decree of declaration to the said effect be drawn up.
21. It is clarified that the Stamp Duty for final decree for partition to be assessed only on the basis of the market value of the house no.133, Hari Nagar Ashram, New Delhi.

CS(OS) No.1246/1999.

22. The plaintiff Om Dutt Sharma is stated to have died.
23. On oral request of the counsel for the plaintiff, Rameshwari Devi, Vijay Sharma, Anand Sharma, Narender Sharma and Rita Sharma stated to be the only natural heirs of the deceased plaintiff Om Dutt Sharma, are substituted in his place.
24. The counsel for the legal heir of the deceased plaintiff Om Dutt Sharma withdraws the suit.
25. Other counsels have no objection.
26. Dismissed as withdrawn.

27. The parties to bear their own costs.
28. The date of 20th July, 2017 before the Joint Registrar stands cancelled.

RAJIV SAHAI ENDLAW, J

MAY 29, 2017

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