

\$~8.

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

+ **CS(OS) No.177/2008**

SUDARSHAN KAUR

..... Plaintiff

Through: Mr. Hemant Malhotra and Mr.
Sukhbir Singh, Advs.

versus

NAVLEEN KAUR & ORS.

..... Defendants

Through: Mr. Nitesh Tyagi, Adv. for D-1 to 3
along with D-1 in person.
D-4 present in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

30.01.2017

1. The counsel for the plaintiff, the counsel for the defendants no.1 to 3 and the defendant no.4 in person (as identified by both the counsels) state that they have been unable to agree with respect to division by metes and bounds of properties no. 1 and 6 in Schedule-I of the order dated 26th April, 2016 passing a preliminary decree for partition in the suit. They thus state that a final decree for partition by sale of all the Schedule-I properties (of which, for properties no.2 to 5, consent for final decree of partition by sale was already given on 21st December, 2016 and as recorded in the order of that date) be passed. It is further clarified that as far as property no.6 namely 7/17, Old Double Storey, Lajpat Nagar-IV, New Delhi – 110 024 is concerned, only half undivided share thereof is subject matter of the suit as the other half undivided share of the said property is exclusively owned by the defendant no.4 Mr. Jagjit Singh Chawla.

2. In the aforesaid state of affairs, there is no point to even consider

appointment of a Commissioner for exploring possibility of division of the properties by metes and bounds. After hearing the counsels it also appears that the parties will be able to acquire exclusive ownership of the properties which they want to retain by being permitted, to be bid in the sale by auction, in the final decree.

3. Accordingly, a final decree for partition of properties mentioned in Schedule-I and Schedule-II of the order dated 26th April, 2016 is passed by sale of all the said properties and by apportionment of sale proceeds between the parties as per their share declared in the preliminary decree and subject to the following conditions:-

- (a) The sale will be by open auction.
- (b) All the parties will be entitled to bid for the properties and whichever party is the highest bidder shall be entitled to the exclusive ownership of the property after payment of the value of the share of the others.
- (c) The purchaser of each of the immoveable property (even if be one of the parties) would be entitled to vacant peaceful physical possession of the property.
- (d) It is informed:-
 - (i) that the plaintiff as well as the defendants no.1 to 4 are residing in 1st Floor of property no.14/85, Vikram Vihar, Lajpat Nagar-IV, New Delhi – 110 024.
 - (ii) 3rd Floor of property no.B-105, Dayanand Colony, Lajpat Nagar-IV, New Delhi – 110 0024 is in possession of a tenant who is paying rent to the defendant no.1 Ms.

Navleen Kaur.

- (iii) 3rd Floor/roof of property no.5/34, Double Storey, Lajpat Nagar, New Delhi – 110 0024 is an open terrace with no construction thereon.
- (iv) 2nd, 3rd and 4th floors of property no.E-48, Old Double Storey, Lajpat Nagar-IV, New Delhi – 110 024 are lying vacant.
- (v) 2nd floor and terrace of property no.Q-46, Old Double Storey, Lajpat Nagar-IV, New Delhi – 110 024 is in occupation of the driver of the deceased husband of the defendant no.1, as a licensee, with no rights to remain in possession thereof.
- (vi) 1/2 share in property no.7/17, Old Double Storey, Lajpat Nagar-IV, New Delhi – 110 024 is again lying vacant, under lock of defendant no.4 and defendant no.1.

4. The counsel for the plaintiff on enquiry states that court fees in terms of para 5 of the order dated 26th April, 2016 has been paid.

5. It is clarified, that the sum of Rs.1,33,250/- due to the plaintiff from the defendant no.1 in terms of para 5 of the order dated 26th April, 2016 shall be adjusted out of the share of the defendants no.1 to 3 in the sale price of the properties aforesaid.

6. This order to form part of the decree sheet.

Parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JANUARY 30, 2017/‘pp’..

CS(OS) No.177/2008

page 3 of 3