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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.42/2016, IA No.1486/2016 (u/O XXXIX R-1&2 CPC),
IA No.10450/2016 (u/O XXXIX R-2A CPC) & IA No.15306/2016
(for condonation of delay in filing replication).
SANDEEP KOHLI AND ANR Plaintiffs

Through: Mr. Aaditya Vijay Kumar, Adv.

versus

VINOD KOHLI AND ANR Defendants

Through: Mr. S. Mukherjee and Molvi Aijaz
Hussain, Advs. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.05.2017**

1. The parties have been unable to arrive at a mutually acceptable mode of division by metes and bounds.
2. Having seen the conduct of the parties over the last few dates, no purpose would be served in the court imposing its own will as the same is likely to keep the parties embroiled in litigation. It is thus deemed expedient to pass a final decree for partition of sale of the property.
3. At this stage the counsel for the defendant no.1 states that Smt. Bagrani Kohli mother of the two plaintiffs is alive and she has not been made a party and the same may create impediments in the sale of the property.
4. This is not the stage to take such a plea.
5. A preliminary decree for partition was passed on 9th December, 2016 declaring the two plaintiffs together to be having 50% undivided share and the defendant no.1 to be having the other 50% undivided share in the property.

6. Even otherwise, the counsel for the plaintiffs states that the mother Smt. Bagrani Kohli is not claiming adversely to the plaintiffs and in the event of sale, if required, will executed all the requisite documents.

7. A final decree for partition, of shop no.81 situated at Central Market, Lajpat Nagar, New Delhi including shops no.81A, 81B and 81C carved out therefrom and as shown in the site plan filed with the plaint and on which today for the purpose of identification Exhibit P-1 is marked, is passed of sale of the property and distribution of sale proceeds amongst the parties as per their respective shares declared in the preliminary decree for partition and by further directing that:

- (i) The plaintiffs as well as the defendant no.1 shall be entitled to participate in the sale and to make the bids and if either of them is the highest bidder, shall be entitled to purchase the share of the other on the same terms on which the bids were invited.
- (ii) The parties shall in pursuance to the sale vacate and deliver vacant physical possession of the portion of the property in their occupation and if fail to do so, shall be liable to be removed therefrom as in pursuance to a decree for possession.

8. The parties are left to bear their own costs.

9. Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MAY 05, 2017

10. The counsel for the two plaintiffs and the counsel for defendant no.1 again mentioned the matter before lunch informing that now the two plaintiffs on the one hand and the defendant no.1 on the other hand have

arrived at a consensus for the division of the property by metes and bounds. They were permitted to, post lunch, present an application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) in the Court.

11. The counsels have handed over an application under Order XXIII Rule 3 of the CPC in the Court and the same is taken on record and be got numbered.

12. The counsels state that instead of a decree as passed in the morning, a final decree for partition by division of the property by metes and bounds in terms of the application under Order XXIII Rule 3 of the CPC and annexures thereto be passed.

13. I have perused the application and find the same to be lawful and allow the compromise as arrived at between the parties.

14. In supersession of the above, a final decree for partition of shop no.81 situated at Central Market, Lajpat Nagar, New Delhi including shops no.81A, 81B and 81C carved out therefrom is passed, by division of the property by metes and bounds in terms of the compromise application and the annexures thereto.

15. The counsels on enquiry state that the Stamp Duty for preparation of the decree shall be borne by the two plaintiffs in the ratio of 60% and the defendant no.1 in the ratio of 40%.

16. A final decree for partition of shop no.81 situated at Central Market, Lajpat Nagar, New Delhi including shops no.81A, 81B and 81C carved out therefrom is accordingly passed, of division of the property between the two plaintiffs on the one hand and the defendant no.1 on the other hand in the manner provided in the compromise application and annexures thereto and

which shall form part of the decree sheet, leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MAY 05, 2017
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