

\$~33

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

+ CS(OS) 82/2017, IA No.2352/2017 (under Order XXXIX Rule 1 & 2 CPC), IA No.5224/2017 (under Order I Rule 10 CPC), IA No.5519/2017 [under Order XXXIX Rule 2(A) CPC] and IA No.5679/2017 (under Order XXXIX Rule 4 CPC)

KRISHAN MOHAN GUPTA Plaintiff
Through: Mr.S.C. Singhal, Advocate
versus

OM PRAKASH KHANDEWAL Defendant
Through: Mr. Shekhar Dasi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.11.2017**

1. In this Suit for partition of property admeasuring 1200 sq.yds. bearing Municipal No. B-248, Naraina Industrial Area, Phase-I, New Delhi, a preliminary decree for partition was passed on 13th April, 2017 declaring the plaintiff and the defendant to be having one-half equal share in the property and a Commissioner appointed to report on the feasibility of partition of the property by metes and bounds.
2. The Commissioner has filed a report dated 18th July, 2017 and on internal page 15 whereof, the Commissioner has in her own hand drawn a site plan showing the division of the property by metes and bounds to which both the parties had agreed.
3. Neither party has filed objection to the said report and rather the counsel for the plaintiff as well as the counsel for the defendant state that they have no objection to a final decree for partition being passed in terms thereof.

4. However, notwithstanding the aforesaid position, final decree for partition has not been passed as yet owing to it having emerged that the entire property is in possession of M/s Surya Industrial Corporation, a partnership firm of plaintiff and the wife of the defendant, as a tenant in the property.

5. The counsel for the defendant states that the property being in possession of tenant, the plaintiff cannot be granted the relief of separate possession of the property as claimed in the plaint.

6. The counsel for the plaintiff states that the plaintiff will take appropriate action in this regard.

7. It has further been agreed that the half portion shown as ‘II’ in the site plan aforesaid, shall belong to the plaintiff and the other half portion shown as ‘I’ in the said site plan shall belong to the defendant.

8. Accordingly, a final decree for partition of the property aforesaid is passed in pursuance of the preliminary decree dated 13th April, 2017, by division of the property by metes and bounds in terms of the report dated 18th July, 2017 of the Court Commissioner and today’s order, both of which shall form part of the decree sheet, leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

NOVEMBER 27, 2017
Pk..