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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.184/2016, IA No.4849/2016 (under Order XXXIX Rules 1&2 CPC) and IA No.8398/2016 (of the defendant under Section 151 CPC).

SANJIV CHATRATH Plaintiff
Through: Mr. Chetan Roy, Adv. along with
plaintiff.

versus

RAJIV NARAIN CHATRATH Defendant
Through: Mr. Manoj Bhandari for Mr. Jitender
Kamra, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **09.03.2017**

1. The counsel for the defendant states that the parties be referred to mediation.
2. The counsel for the plaintiff states that the plaintiff is not willing for mediation as the defendant is only to give the value which he is willing to pay for the share of the plaintiff declared in the preliminary decree for partition and which the defendant has failed to quote inspite of taking time therefor on 23rd February, 2017.
3. Without the plaintiff being agreeable to mediation, no purpose will be served in referring the parties to the Mediation Cell of this Court.
4. I have enquired from the counsel for the defendant as to what is the price which the defendant is willing to pay for the share of the plaintiff in the properties subject matter of partition.

5. The counsel for the defendant though has not quoted any price but states that the defendant is also desirous of sale of the properties.

6. Thus the parties are *ad idem* that both the properties i.e. Shop No.27, South Patel Nagar Market, New Delhi and house no.E-967, Saraswati Vihar, Pitam Pura, New Delhi are to be sold.

7. Once that is so, a final decree for partition of sale of the properties with distribution of sale proceeds as per shares declared in the preliminary decree for partition has to follow.

8. A final decree for partition of Shop No.27, South Patel Nagar Market, New Delhi and house no.E-967, Saraswati Vihar, Pitam Pura, New Delhi by sale of both the properties and distribution of sale proceeds between the parties as per their shares declared in the preliminary decree and subject to the following terms and conditions:-

- (i) That the sale shall be by open bidding/open auction;
- (ii) Both parties shall be entitled to participate in the sale and bid for the properties and if either of the parties is the highest bidder, he shall pay the share of the consideration of the other to the other on the same terms and conditions as imposed at the time of inviting open bids on the purchasers;
- (iii) The parties shall deliver vacant, peaceful, physical possession of the portion of the properties in their respective possession to the purchaser even if be one of the parties and if either of the parties fails to do so, shall be removed therefrom as if pursuant to a decree for possession;

is accordingly passed.

9. The parties are left to bear their own costs.
Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 09, 2017
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