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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2626/2012, IA No.15771/2012 (u/O XXXIX R-1&2 CPC) &
IA No.5215/2017 (u/S 151 CPC)
LALIT BANGA Plaintiff

Through: Mr. Dilpreet Singh, Adv.

Versus

VAZIR CHAND BANGA AND ORS Defendants

Through: Mr. Deepak Dewan, Adv. for D-1 to 4
and 9 to 11.

Mr. Shekhar Nanavaty, Adv. for D-12
to 16.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.12.2017

1. In this suit for partition of property No.7911-17, Estate Qudam Sharif, Ram Nagar, Ara Kashan Road, Nai Basti, Paharganj, New Delhi-110055, a preliminary decree for partition was passed on 23rd February, 2016 declaring the plaintiff to be having 50% share and the defendants together to be having the remaining 50% share in the property and a Court Commissioner appointed to explore the feasibility of division of the property by metes and bounds.
2. The Court Commissioner has filed a report dated 16th September, 2017 proposing the division of the property in two parts separated by dotted line in the site plan Annexure-4 at page 13 of the said report.
3. For the sake of clarity, in today's date, Mark 'A' and Mark 'B' have been put at the two ends of the said dotted line.
4. Neither party has filed any objections to the report of the Court Commissioner.

5. The counsel for the plaintiff states that the plaintiff is willing to take either of the two parts separated by the dotted line between Mark 'A' and Mark 'B' in the site plan aforesaid.
6. On behalf of the defendants, only the counsel for defendants no.1 to 4 and 9 to 11 and the counsel for the defendants no.12 to 16 appear.
7. The counsel for the defendants no.12 to 16 states that the said defendants are also agreeable to the proposal of the Court Commissioner.
8. The counsel for the defendants no.1 to 4 and 9 to 11 however states that the defendants who together have a 50% share are residing in both portions of the property and some of them will be displaced by division of the property as aforesaid and are required to be rehabilitated.
9. That is not a reason to not pass a final decree for partition of the property by metes and bounds as proposed by the Court Commissioner.
10. The counsel for the defendants then states that there are *inter se* disputes between the defendants of their respective 50% share and litigations in this regard are pending.
11. It is also stated that the part falling to the share of the defendants will have to be sold and the sale proceeds thereof distributed.
12. The counsels for the defendants have not shown any preference for either two parts.
13. The counsel for the plaintiff on enquiry states that the plaintiff prefers the 'western' portion and on which in today's date Mark 'C' is put.
14. In the absence of the defendants having made any choice, there is no reason to deny the plaintiff his choice.

15. Accordingly, a final decree for partition of property No.7911-17, Estate Qudam Sharif, Ram Nagar, Ara Kashan Road, Nai Basti, Paharganj, New Delhi-110055 is passed, of division of the said property by metes and bounds in terms of report dated 16th September, 2017 with the 'western' portion bearing Mark 'C' falling to the share of the plaintiff and the other portion on which in today's date Mark 'D' is put, falling to the share of the defendants.

16. Decree sheet be prepared.

17. The counsel for the plaintiff has been cautioned that unless the plaintiff pays the entire stamp duty payable on the decree, the decree will not be prepared and the plaintiff will not be able to execute the same.

RAJIV SAHAI ENDLAW, J

DECEMBER 01, 2017

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