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

+ CS(OS) 298/2016 and I.A. Nos. 7274/2016 (under Order XXXIX Rule 1 and 2 CPC), 12803/2016 (under Order XXIII Rule 3 CPC) and 13633/2016 (Additional facts)

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Decided on: 26th July, 2017

SH ANIL KUMAR

..... Plaintiff

Represented by: Mr. Raj Bahadur Singh,
Advocate.

versus

SH RAJBIR SINGH & ORS

..... Defendants

Represented by: Mr. Rajesh Gupta, Advocate
for defendant Nos. 1, 4 to 10.
Mr. Abhimanyu Singh Khatri,
Advocate for defendant Nos. 2
and 3 with defendant Nos. 2
and 3 in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The present suit was filed by Anil Kumar son of late Balkishan with the following prayers:

“(a) Pass a decree for declaration in favour of the plaintiff against the defendants No. 1 to 6, thereby declaring that the defendants No. 1 to 6 are bound by the terms and conditions as contained in the Mutual Family Partition dated 29.07.1994, and further declare that the defendants No. 1 to 6 have not any kind of right, title, interest, privity or concern with respect to the land of Khasra No. 23//7/2(02-08), 16(04-16), 25(04-12) total measuring 11 bighas 16 biswas situated in the revenue estate of village Mabarikpur Dabas, Delhi, in the interest of justice;

- (b) *Pass a decree of permanent injunction in favour of the plaintiff against the defendant Nos. 1 to 6, thereby defendant No. 1 to 6 be restrained permanently from creating any kind of interference and hindrance to the peaceful possession of the plaintiff with respect to the land of Khasra Nos. . 23//7/2(02-08), 16(04-16), 25(04-12) total measuring 11 bighas 16 biswas situated in the revenue estate of village Mabarikpur Dabas, Delhi.*
- (c) *Pass a decree of declaration, thereby declared that the defendant No. 1 to 6 are only entitled to the enhanced compensation amount if any in lieu of the acquired land belonging to them in accordance with said mutual family partition dated 29.07.1994, in the Land Acquisition Case No. 65A/2013 titled as “ Sh. Niranjana Singh & Ors. Versus Union of India & anr.” and Land Acquisition Case No. 89A/2013 titled as “Rajbir Singh & Ors. versus Union of India & Anr.” and Land Acquisition Case No. 30A/2013 titled as “Inder Dev Vs. Union of India” which cases are presently pending in the court of Sh.Manish Gupta, ADJ-01, North-West, Rohini Courts Complex, Delhi, in the interest of justice.*
- (d) *Cost of the suit be also awarded in favour of the plaintiff and against the defendants;”*

2. The suit properties belonged to late Shri Todar who was survived by three sons Juglal, Kamle and Ghanshyam. The property thereof devolved on the sons and grandsons of Juglal, Kamle and Ghanshyam in the 1/3rd ratio. The family tree is depicted in para -4 in I.A. No. 12803/2016 as under:

Sr. No.	Recorded owner	co-Son of	Share Holding	Family Branches
1.	Rajbir Singh			

	(Def. No. 1)	Om Prakash	1/3 rd share in equal parts	1 st Branch
2.	Birender Singh (Def. No.2)			
3.	Dharmender (Def. No. 3)			
4.	Niranjan Singh (Def. No. 7)	Chander	1/6 th part	2 nd Branch
5.	Suresh Kumar (Def. No. 8)	Bal Kishan	1/6 th share in equal parts	
6.	Anil Kumar (Plaintiff)			
7.	Sunil Kumar (Def. No. 9)			
8.	Praveen Kumar (Def. No. 10)			
9.	Inder Dev (Def. No.5)	Zile Singh	2/9 th share in equal parts	3 rd Branch
10.	Hem Chander (Def. No. 4)	Ghanshyam		
11.	Narender Singh (Def. No.6)	Iswar Dutt.	1/9 th share	

3. The parties to all the three branches entered into a mutual family partition dated 29th July, 1994 wherein defendant Nos. 1, 2 and 3 sons of late Om Prakash were the first party and together took 1/3rd share. As per the terms of settlement the following lands came to the share of the first, second and third party respectively:

“1. That the first party hereto will hold, use, enjoy, the land bearing Khasra Nos. 16/13, 18 (1-3rd share out of these KH. Nos.), Kh. Nos. 24/20/1, 20/2 and 21, 31/5, 3/6, 7, 15 and 23 of village Mubarikpur Dabas, Delhi, without any objections, claims or titles of the other parties.

2. That the second party hereto will hold, use, enjoy, the land bearing Khasra Nos. 3/14, 24 and 1/3rd share out of 16/7

and 18, Kh. Nos. 23/7/2, 16, 25 and 31/4 of village Mubarik Pur Dabas, Delhi, without any objections, claims or titles of the other parties.

3. That the third party hereto will hold, use, enjoy, the land bearing Khasra Nos. 3/16, 25, 17/1, 17/2 and 18 and 1/3rd share of Kh. Nos. 16/8 and 18 and Kh. Nos. 23/6/2, 14, 15 and 24/11, situated in village Mubarik Pur Dabas, Delhi, without any objections, claims or titles of the others.”

4. On the basis of this mutual family partition dated 29th July, 1994, Anil Kumar who was one of the co-owners of the second party filed the present suit impleading the remaining co-owners of the second party and members of the first and third party. On the filing of the suit and pursuant to the summons being issued, parties entered into a settlement and an application under Order XXIII Rule 3 CPC was filed being I.A. No. 12803/2016 which was accompanied by the affidavit of the plaintiff and all the defendants including defendant Nos. 2 and 3. The vakalatnama in favour of the counsel was also signed by all the defendants including defendant Nos. 2 and 3. I.A. No. 12803/2016 was followed by filing another application being I.A. No. 13633/2016 pursuant to order dated 18th October, 2016 passed by this Court since the mutual family partition dated 29th July, 1994 was also required to be made a part and parcel of the application under Order XXIII Rule 3 CPC. I.A. No. 13633/2016 was also accompanied by the affidavits of the plaintiff and all the defendants including defendant Nos. 2 and 3. Considering the background facts and to have a holistic compromise decree passed, this Court vide order dated 9th February, 2017, directed formal detailed statements of each of the party to be recorded. Pursuant thereto the plaintiff, defendant Nos. 1 and 4 to 10 appeared before the learned Joint Registrar and

got recorded their statements affirming the contents of the two applications and the mutual family partition dated 29th July, 1994. However, defendant Nos. 2 and 3 did not appear despite repeated adjournments when Mr. Abhimanyu Singh Khatri, Advocate appeared on their behalf on 11th April, 2017 for the first time and disputed the settlement arrived at between the parties. Hence the matter was listed before the Court.

5. Today defendant Nos. 2 and 3 are present in Court. Copies of their Aadhar Card are taken on record and they are duly identified by Mr. Abhimanyu Singh Khatri, Advocate who has filed a vakalatnama on their behalf. Though initially disputing the mutual family partition when this Court insisted on recording of the statement of defendant Nos. 2 and 3, both defendant Nos. 2 and 3 state that a mutual family partition was arrived at between the parties on 29th July, 1994, copy whereof is placed as Annexure PX at pages 27 to 29 of I.A. No. 13633/2016 renumbered pages being 60 to 62 and they had signed the said settlement. Defendant No. 3 Dharmender, states that he had signed the said mutual family partition in English and the mutual family partition bears his signatures in English. Defendant No. 3 admits his signatures on the copy of mutual family partition deed dated 29th July, 1994 placed on record. Defendant No. 2 Birender Singh also identifies his signature on the mutual family partition deed dated 29th July, 1994. Defendant Nos. 2 and 3 state that they also want partition of the suit properties as per the mutual family partition deed dated 29th July, 1994 however, their grievance is that they are not getting their shares as per the mutual family partition dated 29th July, 1994, though they admit having received compensation from the Government pursuant to the acquisition. Defendant Nos. 2 and 3 state that they will also be bound by their affidavits

in support of I.A. No. 12803/2016 under Order XXXIII Rule 3 CPC and I.A. No. 13633/2016 under Section 151 CPC.

6. Defendant Nos. 2 and 3 have signed the order sheet in acknowledgment of their statements made before this Court today.

7. In view of the fact that the plaintiff and the defendants are agreeable for the decree in the suit in terms of the mutual family partition dated 29th July, 1994 and para-5 of I.A. No. 12803/2016, the suit is decreed declaring the shares of the plaintiff and the defendant Nos. 1 to 6 to be governed by the terms and conditions contained in the mutual family partition, 29th July, 1994, further declaring that the parties to the suit are restrained from creating any kind of hindrance, interference to the peaceful possession of the respective portions of the suit properties coming into the share of other parties. The suit is decreed in terms of the mutual family partition deed dated 29th July, 1994 and para-5 of I.A. No.12803/2016. The contents of the mutual family settlement and para 5 of I.A. No. 12803/2016 will be incorporated in the decree sheet. Suit and the applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JULY 26, 2017
‘yo’