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

+ **CS(OS) 2113/2010**

BALJEET KAUR KALRA Plaintiff

Through: Ms. Chand Rani & Mr. Chirag
Mahalwal, Advs.

Versus

SURJEET SINGH (DECEASED)

THR LR&S ORS Defendants

Through: Mr. R.S. Chaggar, Adv. for D-1(A).
Mr. Puneet Khurana, Adv. for D-3 &
1(B).
Mr. Arvind Nayar, Sr. Advocate
Court Commissioner

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.11.2017**

1. The counsels state that in this Suit for partition, a preliminary decree for partition of property No.12, Kohat Enclave, Pitam Pura, New Delhi-110034 was passed on 27th April, 2016 and vide subsequent order dated 11th August, 2016 a Commissioner appointed for sale of the property.
2. The counsel for the plaintiff and defendants no.2 and 4 states that defendants no.1(B) and 3 are in possession of the property and are refusing to vacate the property and owing where to the property could not be put to sale.
3. The plaintiff and the defendants no.2 & 4 have filed IA No.6750/2017 for direction to the defendant no.1(B) and defendant no.3 for handing over vacant peaceful possession of the premises to the Court Commissioner.
4. The counsel for the defendants No.1(B) and 3 on enquiry states that the property is indivisible by metes and bounds and has to be sold and the

sale proceeds distributed in accordance with the shares declared in the preliminary decree i.e. one-fifth each.

5. Once that is so, there is no impediment to the passing of a final decree for partition of the property by sale and distribution of sale proceeds amongst the parties as per their respective shares declared in the preliminary decree for partition dated 27th April, 2016.

6. Accordingly, a final decree for partition of property No.12, Kohat Enclave, Pitam Pura, New Delhi-110034 is passed, by sale of the property and by distribution of sale proceeds amongst the parties as per their respective shares declared in the preliminary decree for partition.

7. It is further agreed between the parties as under:

- (i) that the defendants no.1(B) and 3 will be entitled to purchase the one-fifth share of the plaintiff, half out of one-fifth share of defendant no.1(A), one-fifth share of defendant no.2 and one-fifth share of the defendant no.4 in the property at a price of Rs.6.85 crores for the entire property;
- (ii) that defendants no.1(B) and 3 shall deposit 20% of the price of shares of aforesaid of plaintiff and of the defendants No.1(A), 2 and 4 in this Court, as earnest money, on or before 21st December, 2017 and shall further deposit the entire balance sale consideration of the selling party's share in this Court on or before 21st May, 2018;
- (iii) that if the defendants no.1(B) and 3 do not deposit the earnest money, they will cease to have any right to purchase as aforesaid and undertake to this Court to, in that eventuality, on

or before 21st January, 2018 vacate the property and to hand over vacant peaceful physical possession of the property to the Commissioner already appointed who is requested to continue with the Commission notwithstanding his designation as a senior advocate of this Court;

- (iv) that if the defendants no.1(B) and 3 do not so vacate the property, they shall be liable to be proceeded against for breach of undertaking given to this Court and shall in that case be also jointly and severally liable for *mesne profits* / damages for use and occupation at the rate of Rs.50,000/- per month and the said amount if not paid month by month shall be deducted out of their share of the sale proceeds along with interest at the rate of 9% per annum on arrears thereof;
- (v) that the defendants no.1(B) and 3 shall be entitled to purchase the property in their own name or in the name of any other person; however the liabilities undertaken shall be personally of the defendants no.1(B) and 3 jointly and severally and non-performance by any other to whom they may agree to sell the property would be no ground for showing any leniency;
- (vi) that if the earnest money is paid and the balance sale consideration is not paid within the agreed time, the earnest money deposited shall stand irrevocably forfeited to the selling parties in proportion of their respective share in the property as per the preliminary decree;

- (vii) that upon receipt of the entire sale consideration, the selling parties shall sign all documents as may be desired by the defendants no.1(B) and 3 or any other person whom they may nominate for purchase or for transfer of their respective shares in the property;
- (viii) the selling parties shall on the request of the defendants no.1(B) and 3, sign all documents for conversion of leasehold rights in the land underneath the property into freehold in the name of all the parties to the suit; all expenses in this regard shall be borne by the defendants no.1(B) and 3;
- (ix) if any of the selling parties are not signing any of the documents, the defendants no.1(B) and 3 to seek execution of this order by applying to the Court and the same shall again not absolve the defendant no.1(B) and 3 from their liabilities aforesaid;
- (x) that if the defendants no.1(B) and 3 are in default of deposit of earnest money or balance sale consideration as aforesaid, the property shall be sold by the Court Commissioner for the maximum price recoverable therefor; and,
- (xi) as far as the share of defendant no.1(A) is concerned, since there is a dispute between defendant no.1(A) and defendant no.1(B), the release of defendant no.1(A)'s share of the amounts deposited or sale price shall be subject to orders in the Probate Case stated to be pending with respect to the alleged Will of the deceased defendant no.1.

8. The terms above to form part of final decree for partition.
9. The Court Commissioner is requested to, for the time being, accept a sum of Rs.1 lac from the selling parties and a sum of Rs.1 lac from the purchasing parties, for further work required to be done under the Commission. The fee shall be enhanced if the property is to be put to sale owing to the default of defendants no.1(B) and 3 and in which case the further fee of the Court Commissioner and the charges for sale shall be deductible out of the share of the defendants no.1(B) and 3 of the sale consideration.
10. Decree sheet be drawn up.
11. File be consigned to record.

Dasti.

RAJIV SAHAI ENDLAW, J

NOVEMBER 22, 2017

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