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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 325/2016, IAs No.7748/2016 & 8513/2016 (both u/O XXXIX R-1&2 CPC), IA No.8076/2016 (u/O XXXIX R-2A CPC), IA No.8511/2016 (u/O XXXIX R-4 CPC), 15102/2016 (of plaintiff u/S 151 CPC) & 15103/2016 (of defendant for directions)
SHASHI JINDAL Plaintiff

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Lalit Gupta, Mr. Harsh Singhal & Mr. M. Padalia, Advs.

Versus

NEETA AGARWAL Defendant

Through: Mr. Sudhir K. Makkar, Sr. Adv. with Ms. Meenakshi Singh & Ms. Saumya Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **23.03.2017**

1. The plaintiff has filed IA No.3685/2017 under Order XXIII Rule 3 CPC for a final decree for partition in terms of a compromise stated to have been arrived at between the husband of the plaintiff and the husband of the defendant and in proof thereof a handwritten paper dated 20th February, 2017 stated to have been signed by the husband of the plaintiff as well as by the husband of the defendant is filed as Annexure-A1 to the application.
2. The defendant had earlier filed IA No.15103/2016 making some suggestions with respect to the property and seeking directions therefor.
3. The counsels have been heard on both the aforesaid applications.
4. According to the senior counsel for the plaintiff, the compromise arrived at between the plaintiff and the defendant is:

(i) that the property No.8, Sunder Nagar, Mathura Road, New

Delhi-110 003 shall not be sold at least for a period of ten years from 20th February, 2017;

(ii) that the plaintiff, for the said period of ten years, shall be entitled to use:

- (a) the entire ground floor of the main building including the entire lawn area, entire backyard and entire drive way;
- (b) one portion comprising of one bedroom with balcony, WC and bathroom which portion is approximately 25% of the floor area of the first floor of the main building;
- (c) portion of loft / mezzanine situated in between the ground floor and first floor of the main building;
- (d) one garage situated on the ground floor of the annexe block;
- (e) half portion of the first floor of the annexe block; and,
- (f) the entire second floor of the annexe block.

(iii) that the defendant, for the said period of ten years, shall be entitled to use:

- (aa) the entire built up second floor of the main building;
- (bb) remaining portion of the first floor of the main building comprising of one drawing room with balcony, two bedrooms with one bathroom / WC, one kitchen, balcony towards the kitchen and lobby area which portion is approximately 75% of the floor area of the first floor;
- (cc) portion of loft / mezzanine between the ground floor and the first floor the main building;
- (dd) one garage situated on the ground floor of the annexe block;

(ee) half portion on the first floor of the annexe block.

(iv) Certain other terms also claim to have been agreed upon are listed in IA No.3685/2017.

5. The senior counsel for the defendant controverts that any such compromise was arrived at.

6. The senior counsel for the plaintiff in support of the compromise claimed, has drawn attention to IA No.15103/2016 filed by the defendant and has contended that the defendant herself had therein mooted a suggestion of living arrangement between the plaintiff and the defendant, leaving it to this Court (para no.5 of the application) to decide the period for which such living arrangement is to continue.

7. The senior counsel for the defendant states that the living arrangement in contemplation of the defendant, was of 4/5 years.

8. The senior counsel for the plaintiff states that the plaintiff would be incurring expenses on the property and it will not be worthwhile to have living arrangement for 4/5 years only.

9. Several proposals including for partition by metes and bounds of the properties were exchanged in the Court, with the matter being passed over twice to enable the counsels to consider.

10. I may record that the son of the plaintiff stated to be authorized by the plaintiff and the defendant and her husband are present in Court.

11. Before the lunch session, it was agreed that the property will be partitioned by metes and bounds, a) with the plaintiff having i) the entire ground floor with lawn and rear courtyard; ii) the entire annexe block; b) the defendant having i) the entire first floor and the entire second floor; ii) use of terrace above the second floor; and, c) with a provision (i) that in the

driveway on the ground floor, the defendant will have a right to park two cars and the remaining driveway besides for access to the upper floor shall be used by the plaintiff for parking; (ii) as and when construction is permissible on the terrace above the second floor, the plaintiff and the defendant would have equal exploitation right; and, (iii) freehold rights in the land underneath the property will be held equally by the plaintiff and the defendant with each having 50% share therein.

12. Due to the intervening lunch, the matter was kept after lunch for recording the aforesaid compromise and passing of final decree for partition by metes and bounds.

13. However, post lunch the senior counsel for the defendant states that the defendant is not agreeable to a decree for partition by metes and bounds though is agreeable to deferring the sale and a living arrangement in terms of para 11 above till then.

14. I have proposed the living arrangement in terms of what is recorded in para no.11 above for a period of ten years.

15. The senior counsel for the defendant states that the defendant is not consenting to the period of the living arrangement.

16. It is quite evident that the parties are not being guided by reason and logic and are acting out of sibling rivalry. It is not deemed appropriate to keep this lis pending any more.

17. I am satisfied that once the living arrangement was offered by the defendant herself in IA No.15103/2016 and the senior counsel for the defendant states that the defendant contemplated the same to be for 4/5 years, this Court is entitled to intervene and to fix the term of the living arrangement as per what is transpired in the last several hearings and today

during the hearing before this Court.

18. Accordingly, a final decree for partition,

I) of property No.8, Sunder Nagar, Mathura Road, New Delhi-110 003 is passed on the following terms:

(i) of sale of property bearing No.8, Sunder Nagar, Mathura Road, New Delhi-110 003 by open auction and distribution of the sale proceeds between the parties as per their respective shares declared in the preliminary decree and with both the parties being entitled to participate in the sale and to bid for the property and if the bid of either of the parties is the highest, for becoming the sole owner of the property by paying the share of the other against delivery of possession;

(ii) however the final decree for partition by sale as aforesaid is made inexecutable for a period of ten years from 20th February, 2017 and during which period,

A. the plaintiff shall be in use and occupation of:

- (a) the entire ground floor of the main building including the entire lawn area and the entire backyard;
- (b) entire annexe block;
- (c) portion of the loft / mezzanine between the ground floor and the first floor of the main building, accessible from the kitchen on the ground floor.

B. the defendant shall be in use and occupation of:

- (a) the entire first and second floors;
- (b) use of terrace above the second floor of the main

building;

- (c) portion of the loft / mezzanine between the ground floor and the first floor of the main building, accessible from the staircase from the ground floor to the first floor of the main building;

- C. the driveway on the ground floor shall be used by the parties in common, with the defendant having a right to park two vehicles therein and the plaintiff having the right to park vehicles in the remaining driveway in a manner so as not to obstruct the access of the defendant to the upper floors of the property or to move the two vehicles.
- D. neither party, during the said period, shall be entitled to raise any construction or make material addition or alteration in their respective portion of the property.
- E. Both parties shall be entitled to let out their respective portions for a period not extending beyond ten years aforesaid and / or entitled to sell their undivided rights in the property under the preliminary decree as well as under this final decree for partition on the condition of the purchaser from either of the parties being bound by the decree.
- F. Both plaintiff and the defendant deny that the original documents of the property are with them and if it is found to be otherwise, the party making a false statement today will be liable therefor.

II) of the movable assets is passed by appointment of **Mr. D.K. Rustagi,**

Advocate as Commissioner, Mob. No.9810033559/9999854760. His fee is fixed initially at Rs.5 lacs besides out of pocket expenses, to be borne equally by the parties.

19. The parties to be bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 23, 2017

‘gsr’..

[corrected & released on 2nd May, 2017]