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

+ **CS(OS) 140/2012**

JATINDER OBEROI Plaintiff

Through: Mr. Nishant Anand, Adv.

Versus

RAJIV OBEROI Defendant

Through: Mr. Rajshekhar Rao, Mr. Ravi Kapoor & Mr. Karthik Sundar, Advs. for D-1.

Mr. Rajat Aneja & Ms. Chandrika Gupta, Advs. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.11.2017

1. In this suit for partition of Basement, Ground Floor, First Floor and half terrace above the Second Floor, of property No.L-10, Kalkaji, New Delhi, a preliminary decree for partition was passed on 30th May, 2016 declaring the plaintiff Jatinder Oberoi and the defendant no.1 Rajiv Oberoi to be having 50% undivided share therein.
2. The entire Second Floor and half of the terrace above the Second Floor is informed to have been jointly sold by the plaintiff Jatinder Oberoi and the defendant no.1 Rajiv Oberoi prior to the institution of the suit in favour of persons who are not before this Court.
3. The plaintiff Jatinder Oberoi has executed Agreement to Sell dated 20th May, 2011 with respect to the entire First Floor of the property in occupation of the plaintiff Jatinder Oberoi in favour of the defendant no.4 Rajesh Gupta.

4. Similarly, the plaintiff has executed Sale Deed dated 2nd May, 2011 with respect to his 50% undivided share in the basement of the property and another Sale Deed also dated 2nd May, 2011 with respect to his 50% undivided share in 50% of the terrace above the Second Floor, in favour of the defendant no.4 Rajesh Gupta.
5. The plaintiff Jatinder Oberoi has also executed yet another Agreement to Sell in favour of the defendant no.4 Rajesh Gupta with respect to his 50% undivided share in the First Floor and 50% undivided share in the Ground Floor of the property.
6. However, on 30th May, 2016, it was agreed that the Agreement to Sell and the Sale Deeds aforesaid will be construed as with respect to 50% undivided share of the plaintiff Jatinder Oberoi in the property aforesaid.
7. It is the contention of the counsel for the defendant no.1 Rajiv Oberoi that the Agreement to Sell with respect to 50% of the undivided share in the First Floor and 50% undivided share in the Ground Floor is in violation of the interim order in this suit. IA No.7827/2017 under Order XXXIX Rule 2A is pending in this regard.
8. The counsels for the plaintiff, Jatinder Oberoi, defendant no.1 Rajiv Oberoi and defendant no.4 Rajesh Gupta are ad idem that the Basement, Ground Floor, First Floor and 50% of terrace above the Second Floor qua which preliminary decree for partition has been passed are impartible by metes and bounds. Hence, a final decree for partition of sale of the said portion of the property and distribution of sale proceeds in terms of shares declared in the preliminary decree for partition has to be passed.

9. Accordingly, a final decree for partition of the Basement, Ground Floor, First Floor and 50% of terrace above the Second Floor of property No.L-10, Kalkaji, New Delhi, constructed over land ad-measuring 200 sq. yds., is passed, of sale thereof and of distribution of sale proceeds in terms of the shares declared in the preliminary decree for partition dated 30th May, 2016.

10. As far as the IA No.7827/2017 of the defendant no.1 Rajiv Oberoi under Order XXXIX Rule 2A CPC is concerned, I have enquired from the counsel for the defendant no.1 Rajiv Oberoi that even if it were to be held that the plaintiff has acted in violation of any interim order and for that reason the Agreement to Sell with respect to 50% undivided share in the First Floor is bad or null and void, the same will not prevent the plaintiff from acting through the defendant no.1 Rajiv Oberoi in the proceedings to take place in pursuance to this final decree for partition. The plaintiff Jatinder Oberoi through counsel states that the plaintiff Jatinder Oberoi is bound by the Agreement to Sell and has assigned his entire 50% undivided share under the preliminary decree for partition in favour of the defendant no.4 Rajesh Gupta.

11. In this view of the matter, it is felt that no purpose will be served by enquiring into the application under Order XXXIX Rule 2A of the CPC or by rendering finding thereon.

12. Thus IA No.7827/2017 is dismissed.

13. It is further directed i) that the defendant no.1 Rajiv Oberoi and the defendant no.4 Rajesh Gupta as nominee of the plaintiff Jatinder Oberoi shall be entitled to make *inter se* bids before seeking execution of the final

decree for partition by sale through process of the Court; ii) that whichever party's bid is the highest shall be entitled to execution by the other party of all documents of conveyance and to vacant peaceful physical possession of the portion of the property in the possession of that party; iii) that in the event of an Execution Petition being filed and the property being auctioned through the process of this Court, the defendant no.1 Rajiv Oberoi and the defendant no.4 Rajesh Gupta who are today in actual physical possession of different portions of the property aforesaid would, on receipt of sale consideration, be liable to deliver vacant peaceful physical possession of the entire portion in their respective possession to the purchaser and if fail to do so, shall be liable to be dispossessed therefrom as if in execution of a decree for possession; iv) that the plaintiff Jatinder Oberoi, defendant no.1 Rajiv Oberoi and defendant no.4 Rajesh Gupta shall hereafter not deal with the property or induct any other person into possession of or encumber the property, save in accordance with this order and the final decree for partition.

14. This order shall form part of the decree sheet.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

NOVEMBER 29, 2017

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