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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.337/2016, IA No.8105/2016 (under Order XXXIX Rules 1&2 CPC) and IA No. /2017 (of the parties under Order XXIII Rule 3 CPC).

BABY KHUSHII ARORA & ANR Plaintiffs

Through: Mr. Kanwal Chaudhary, Adv.

versus

NINA & ORS Defendants

Through: Mr. Jagjit Singh, Adv. for D-1 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.01.2017

1. The two minor plaintiffs, acting through their mother, after the demise of their father on 19th April, 2016, claim partition against the brothers and sisters of their father, of house No.F-224, Mansarover Garden, New Delhi *ad-measuring* 493 sq. yds. owned by their paternal grandfather Sh. Manohar Lal Arora who died on 26th May, 2005 leaving the father of the minor plaintiffs and his brothers and sisters as his heirs.

2. The suit was entertained and vide order dated 18th July, 2016, while issuing summons thereof to the defendants, the parties were directed to maintain *status quo* qua title, construction and possession of property no.F-224, Mansarovar Garden, New Delhi.

3. All the four defendants appeared through counsel and on 16th December, 2016 stated that a compromise application shall be filed within one week. Accordingly the matter was adjourned to today. Though no compromise application has been filed but the counsel for the two minor plaintiffs namely Baby Khushii Arora and Master Keshav Arora and the

counsel for four defendants namely Smt. Nina, Smt. Simmi Arora, Smt. Meenu Kapur and Sh. Shiv Arora seek permission to hand over the application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) in the Court.

4. Allowed.

5. The application is taken on record and be got numbered.

6. The counsel for the plaintiffs and the counsel for the defendants state that the mother of the two minor plaintiffs and all the four defendants are personally present in the Court and the application is signed by all of them and is supported by affidavits of all of them. The counsels state that they have also signed the application.

7. I have perused the compromise arrived at between the parties and find that the property aforesaid has been agreed to be sold and 10% of the sale proceeds thereof have been agreed to be paid to each of the two minor plaintiffs.

8. The counsels state that a preliminary as well as final decree for partition by sale of the property and distribution of sale proceeds to the extent of 10% to each of the plaintiffs be passed.

9. The two plaintiffs being minor, the counsel for the plaintiffs besides signing the application has also filed his affidavit along with the application to the effect that the compromise is in the larger welfare and interest of the minor plaintiffs. The counsel for the plaintiffs has also stated that he has personally visited the property.

10. The property, as aforesaid belonged to the paternal grandfather of the two plaintiffs who died leaving, besides his widow, the father of the

two plaintiffs, the four defendants as his only natural heirs; the widow as well as the father of the plaintiffs have since died. Thus, the four defendants and the father of the plaintiffs were entitled to 1/5th share each in the property.

11. The defendants having agreed to give such 1/5th share to the two plaintiffs, it is found that the minor plaintiffs under the compromise are not getting anything less than what they would otherwise be entitled to.

12. In this regard it may also be noticed that otherwise it is the stand of the defendants through counsel today that the mother of the plaintiffs at the time of dissolution of her marriage with the father of the plaintiffs had also received an amount of Rs.15,00,000/- on account of the two plaintiffs and according to the counsel for the defendants the plaintiffs for this reason have no share in the property.

13. On enquiry as to who is in possession of the property it is stated that the defendant no.4 Mr. Shiv Arora alone is in possession and control of the entire property.

14. The counsel for the defendants on enquiry states that the defendant no.4 in pursuance to the sale agreed shall deliver vacant physical peaceful possession of the entire property to the purchaser thereof so as to fetch the best possible price for the property.

15. I am satisfied that the compromise arrived at between the parties is lawful and is for the benefit of the two minor plaintiffs. Accordingly, the mother of the plaintiffs acting as guardian of the two minor plaintiffs, who are informed to be seventeen and twelve years of age, is permitted to enter into the compromise as contained in the application on behalf of the two

minor plaintiffs on the condition that appropriate orders to secure the sale proceeds of the share of the plaintiffs shall be made at the time when the decree is sought to be executed and if the sale is effected without the decree being executed, then the sale consideration of the share of the two minor plaintiffs, till they attain majority, shall be kept in a fixed deposit in the name of each of the plaintiffs and only the interest thereof shall be used for day-to-day needs of the two plaintiffs. It is clarified that the mother namely Ms. Meenu Arora is also authorised to, during the minority of the plaintiffs execute documents of transfer of plaintiffs' share of the property.

16. Though in the application the shares of the defendants *inter se* have not been defined but the counsel for the defendants states that each of the four defendants have equal share in the remaining 80% share in the property.

17. Accordingly, the compromise as recorded in the application is allowed.

18. A preliminary decree for partition is passed declaring the two plaintiffs together and each of the four defendants to be having 20% share each in the property no.F-224, Mansarover Garden, New Delhi *ad-measuring* 493 sq. yds.

19. Decree sheet be drawn up.

20. In accordance with the compromise, a final decree for partition is also passed, for sale of the property and distribution of sale proceeds thereof in accordance with the share of each of the parties declared in the preliminary decree and with the condition (i) that the defendant no.4 who is in possession of the property shall deliver vacant peaceful physical possession of the entire property to the purchaser and if resists the same shall be liable

to be removed therefrom treating the decree to be as for recovery of possession; and, (ii) all the parties shall be entitled to participate in the sale and to bid for the property; needless to state that if the defendant no.4 is the highest bidder, subject to his paying the sale consideration of the share of the other parties, he shall be entitled to retain possession.

21. It is further ordered that the parties shall remain bound by the compromise arrived at.

22. The compromise application and this order to form part of the decree sheet.

23. The parties are left to bear their own costs.

24. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 11, 2017

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