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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 388/2016, IAs No.9367/2016 (u/O XXXIX R-1&2 CPC),
1750/2017 (of D-2 u/O VII R-11 CPC), 1751/2017 (of D-2 for
codonation of 27 days delay in filing WS) & 2361/2017 (of D-2 u/S
151 CPC)

M.K. GOVIL Plaintiff

Through: Mr. S.C. Singhal, Adv.

Versus

HARISH CHAND GOVIL & ORS Defendants

Through: Mr. Bharat Bhushan Gupta, Adv. for
D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.03.2017**

1. In this suit for partition of immovable property, a preliminary decree for partition was passed on 9th February, 2017 and the suit was adjourned to enable the counsels to explore the possibilities of settlement.
2. According to the counsel for the plaintiff and the counsel for the defendant nos.1,3,4&5, the property is incapable of partition by metes and bounds and is to be sold and the sale proceeds distributed in accordance with the shares declared in the preliminary decree.
3. On 22nd February, 2017, on request of the counsel for the defendant no.2, the proceedings were adjourned to today.
4. The counsel for the plaintiff states that the plaintiff and the defendant no.1 together have agreed to buy the share of others, the value whereof has been put at Rs.40 lacs and the defendants no.3,4&5 are agreeable thereto. It is stated that the plaintiff is willing to pay the same amount for the share of the defendant no.2 as well.

5. Mr. Bharat Bhushan Gupta, Advocate states that he has been engaged on behalf of defendant no.2 and he will within two days file an appeal against the preliminary decree for partition and seeks adjournment.

6. It is evident from the aforesaid that according to the defendant no.2 also, the property is not capable of partition by metes and bounds.

7. Thus a final decree for partition by sale of the property and distribution of the sale proceeds amongst the parties as per their shares declared in the preliminary decree has to be passed.

8. As far as the request of the counsel for the defendant no.2 for adjournment is concerned, the filing of the appeal against the preliminary decree for partition does not come in the way of passing of the final decree for partition. Passing of the final decree of partition would not come in the way of defendant no.2 preferring an appeal in accordance with law against the preliminary decree. In fact, the defendant no.2 can along with the appeal proposed to be filed also challenge the final decree for partition.

9. Accordingly, a final decree for partition is passed, of sale of property No.319, Deepali, Pitampura, Delhi and distribution of sale proceeds thereof amongst the parties as per their respective shares declared in the preliminary decree for partition and on the following terms:

- (i) That the sale will be by open auction / open bidding.
- (ii) That all the parties to the suit would be entitled to participate in the said open auction / open bidding and if are the highest bidder shall, on the terms of open auction / open bidding as applicable to others, be entitled to buy the property.

(iii) That whichever party is in possession, use and occupation of the property or any part thereof shall be liable to deliver vacant, peaceful, physical possession of the property / portion in his / her occupation to the purchaser, even if the purchaser be one of the parties and if fails to do so shall be liable to be evicted as in a case of decree for recovery of possession of the property.

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

12. On enquiry, it is informed that the cost imposed on the defendant no.2 has not been paid.

13. IA No.2361/2017 of the defendant no.2 for waiver of the said cost is dismissed.

15. The cost shall be recoverable from the defendant no.2.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 08, 2017

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