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

+ CS(OS) 461/2016

**NORTH EASTERN PUBLISHING &
ADVERTISING CO. LTD.**

..... Plaintiff

Through: Mr. Ashok Kumar Jain and Ms.
Priyanka Das, Advs.

Versus

NIRMAL GUPTA & ANR

..... Defendants

Through: Mr. Madhav Khurana and Mr. Aalam
Nijjar, Advs. for D-1&3.
Mr. Rajiv Talwar and Mr. Amulya
Dihngra, Advs. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.02.2017

1. This order is in continuation of the earlier order dated 9th January, 2017 and 24th January, 2017.
2. The counsel for the plaintiff and the counsel for the defendant No.1 Smt. Nirmal Gupta and defendant No.3 Mr. Vineet Gupta both state that final decree for partition of the property by sale thereof and distribution of sale proceeds between the parties as per their shares declared in the preliminary decree be passed.
3. The counsel for the defendant No.2 Smt. Asha Gupta however states that it is essential for a decree for partition to specify the shareholders and

the shares. It is stated that since it is in dispute, whether $2/6^{\text{th}}$ share in the property is owned by defendant No.2 Smt. Asha Gupta or the defendant No.3 Mr. Vineet Gupta, no final decree for partition can be passed till the said dispute has been adjudicated. It is stated that the plaintiff and the defendant No.1 can sell their $3/6^{\text{th}}$ and $1/6^{\text{th}}$ share respectively.

4. Though the stage for the counsel for the defendant No.2 Smt. Asha Gupta to make the said contention was at the stage of passing of the preliminary decree for partition on 9th January, 2017 declaring the plaintiff to be the owner of $3/6^{\text{th}}$ or one half undivided share in the property, the defendant No.1 to be the owner of $1/6^{\text{th}}$ undivided share in the property and the ownership of remaining $2/6^{\text{th}}$ share being subject to the outcome of CS(OS) No.153/2007 or on 24th January, 2017, but the counsel for the defendant No.2 has still been allowed to address on the said aspect.

5. It has been enquired from counsel for defendant No.2 as to why the plaintiff and the defendant No.1, about whose share in the property there is no dispute, should be allowed to suffer for the reason of the inter se dispute between the defendants No.2 & 3 with respect to $2/6^{\text{th}}$ share in the property and which is not even the subject matter of the present suit but the subject matter of the previously instituted CS(OS) No.153/2007.

6. The counsel for the defendant No.2 Smt. Asha Gupta states that the defendant No.2 will suffer if the final decree for partition by sale of the property is passed and the property is sold prior to the adjudication of *lis* between defendant No.2 and defendant No.3.

7. This aspect also has been adjudicated in the order dated 24th January, 2017 and cannot be revisited.

8. The counsel for the defendant No.2 then contends that in fact this Court does not have the power to decree partition by sale of the property owing to the pendency of CS(OS) No.153/2007. The counsel, in this regard has first drawn attention to Section 54 of the Code of Civil Procedure, 1908 (CPC) to contend that a decree for sale of share which has yet not been determined cannot be passed.

9. Section 54, on a reading thereof, is for partition of an undivided estate assessed to the payment of revenue to the Government or for separate possession of a share of such estate. It is not the case of either of the parties, not even of the defendant No.2, that the subject property is an estate assessed for payment of revenue to the Government. Section 54 CPC to which attention is drawn is with respect to agricultural land as governed by the Delhi Land Reforms Act, 1954 and the Delhi Land Revenue Act, 1954 and would have no application to the subject property. It was so held by the Division Bench of this Court in ***Surendra Pal Singh Vs. Ravindra Pal Singh*** 210 (2014) DLT 386. Reference may also be made to ***Shub Karan Bubna Vs. Sita Saran Bubna*** (2009) 9 SCC 689 and ***Kalyani Vs. Sanjeeva Soana*** 1988 SCC OnLine Kar 222.

10. Even otherwise, what is contended does not follow from a reading of Section 54 CPC, even if applicable. The shares of the parties have already been determined in the preliminary decree. It is not that the said shares are part of a larger estate. It is only to such situations that Section 54 CPC applicable.

11. The counsel for the defendant No.2 has next drawn attention to Order XX Rule 18 of CPC and contends that thereunder also there is no sale of CS(OS) 461/2016

undetermined portion.

12. The same also is not found to be applicable. The shares of the parties have already been determined with the plaintiff and the defendant No.1 having the shares as aforesaid. It is only with respect to 2/6th share that there is an inter se dispute between the defendant No.2 and the defendant No.3. The said inter se dispute also does not fall for adjudication in the present suit as it is already a subject matter of adjudication in a suit filed as far back as in the year 2007. Once that is the position, in my view Order XX Rule 18 of CPC does not come in the way of the final decree for partition to be passed by sale of the property directing the value of the disputed share between defendant No.2 and the defendant No.3 to be deposited in the Court, subject to the outcome of CS(OS) No.153/2007. The defendants No.2&3 can always seek direction in CS(OS) No.153/2007 for investment of the amount in optimum fashion.

13. The counsel for the defendant No.2 has then drawn attention to Section 2 of the Partition Act, 1893 providing for final decree for partition by sale of the property to contend that the same presupposed identification of the shareholders.

14. It is not as if there is no shareholder of 2/6th share in the property. Both, defendant No.2 and defendant No.3 claim rights thereto and which rights are under adjudication. Thus, it is not the case as contended. Moreover, there is nothing in Section 2 supra barring final decree for partition by sale in the event of inter se dispute between two or more persons with respect to one share in the property and when other share in the

property are not affected by the said dispute. Just like in the event of partition by metes and bounds, the portion of property allocated in lieu of said 2/6th share would have been subject to orders in CS(OS) No.153/2007, so in the case of sale of property, the value of said 2/6th share will be subject to such orders.

15. The counsel for defendant No.2 then states that without the ownership of the said 2/6th share being decided, no title therein can be conveyed.

16. Though that is not an issue which arises at this stage and would be subject matter of execution but to answer the contention, the Court in execution of decree or in CS(OS) No.153/2007 can pass appropriate direction for execution of conveyance deed with respect to the said 2/6th share. That also thus does not come in the way of passing of final decree for partition.

17. No merit having been found in the objection of the defendant No.2, a final decree for partition of property No.22, Rajpur Road, Delhi is passed by sale of the property and distribution of sale proceeds amongst the parties as per shares declared in the preliminary decree for partition passed on 9th January, 2017.

18. It is however clarified:

- (i) that the sale, if not by inter se bidding between the parties, shall be by public auction;
- (ii) that all the parties shall be entitled to participate in the auction on the same terms as of the auction qua others and if are the highest bidder, shall be at par with an outside purchaser;

(iii) that the possession of the property being of the plaintiff and the defendants No.1&2, the said defendants and plaintiff shall in pursuance to the sale aforesaid deliver vacant, peaceful and physical possession to the purchaser, even if be one of the parties themselves;

(iv) that the defendant No.3 shall not create any impediments to the sale, claiming possession of the property.

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

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 08, 2017

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