

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

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Reserved on: 21st July, 2017

Decided on: 2nd August, 2017

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EX.P. 252/2015

DR BISWAJIT CHAUDHURI

..... Decree Holder

Represented by: Mr.S.S.Jauhar, Advocate

versus

**LT COL (RETD) MAHAJIT
CHAUDHURI & ORS**

..... Judgement Debtors

Represented by: Mr.Kirtiman Singh, Mr.prateek
Dhanda, Mr.Waize Ali Noor
and Mr.Vikramaditya Singh,
Advocates for JD-1.
Mr.M.L.Sharma and
Ms.Suman, Advocates for
JD-2.
Mr.Sudeep Singh, Advocate for
JD-3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Two suits were filed inter-parties who are siblings being CS(OS) 644/1982 and CS(OS) 2995/1996 before this Court wherein an appeal was filed by Judgment Debtor No.1/ Mahajit Chaudhuri being FAO(OS) 224/2010. The four parties to the suit who are legal heirs of late Lt. Gen. B. Chaudhuri entered into a settlement and statements of Decree Holder and the three Judgment Debtors in the present Execution Petition were recorded by the Division Bench as under:

“Statement of Dr.Biswajit Chaudhuri S/o Late Lt.Gen. B. Chaudhuri, R/o B-59, Defence Colony, New Delhi 110024.

ON SA:-

I have resolved all my claims and differences with my siblings in respect of the estate of my late father Lt.Gen. B. Chaudhuri as well as my mother late Mrs. Dipty Chaudhuri. This settlement has been arrived at without prejudice to the Will dated 10.01.1982 of our late father. I have agreed that I shall give up all and any right in the immovable property at 1/16, Shanti Niketan, New Delhi, in consideration of my siblings giving up all their claims and rights in the immovable property at B-59, Defence Colony. It has been agreed between my brother and sister that the immovable property at Shanti Niketan shall be sold within a period of three month. Accordingly, my sister Smt.Dwipanjali Roy who is presently living on the first floor and Barsati of B-59, Defence Colony shall move out/ hand over possession of the said premises to me within four months from today.

Statement of Smt. Dwipanjali Roy w/o late Shri S.J.Roy, R/o B-59, Defence Colony, New Delhi, Age 74 years.

ON SA:-

I have agreed with my siblings to share the estate of our late parents Lt.Gen.B. Chaudhuri and late Mrs. Dipty Chaudhuri in the manner that I hereby give up all my rights in B-59, Defence Colony, New Delhi. Property at 1/16, Shanti Niketan, New Delhi shall be sold jointly by Lt.Col.Mahajit Chaudhuri, Smt. Sreelata Chaudhuri and myself within three months from today. From the sale consideration, my brother Lt.Col.Mahajit Chaudhuri shall be entitled to a share of 28%, my sister-in-law Smt. Sreelata Chaudhuri a share of 42% and I, the remaining share of 30%. I shall hand over possession of the first floor and barsati floor presently in my occupation to my brother Dr.Biswajit Chaudhuri within four months from today.

Mrs. Lolly Chaudhuri, w/o Lt.Col. Mahajit Chaudhuri (Retd.)
R/o RC-9, Sally Ride Path, Bidhannagar Durgapur-713212,
West Bengal, Age 64 years

ON SA:-

I have conferred with my husband Lt.Col.Mahajit Chaudhuri, who is presently not in Delhi. On his instructions, I state on his behalf that he has entered into a settlement with his siblings pertaining to the estate of his father late Lt.Gen.B. Chaudhuri as well as his mother late Mrs. Dipty Chaudhuri in the manner that he gives up all his rights in the property B-59, Defence Colony, New Delhi, in consideration of sharing property 1/16, Shanti Niketan. It has further been agreed between my husband and his sisters Smt. Dwipanjali Roy and sister-in-law Smt. Sreelata Chaudhuri that the Shanti Niketan property shall be sold within three months from today and 28% of the sale proceeds shall be receivable by my husband Lt.Col.Mahajit Chaudhuri. His sister Smt. Dwipanjali Roy shall be entitled to 30% of the sale proceeds and my sister-in-law Smt. Sreelata Chaudhuri shall be entitled to the remaining 42%. I also state that our counsel Mr. Dayan Krishnan, Advocate, who is present in court, has received these instructions from my husband.

Statement of Smt. Sreelata Chaudhuri w/o late Shri Indrajit Chaudhuri, R/o 1/16, Shanti Niketan, Rao Tula Ram Marg, New Delhi, Age 68 years

ON SA:-

I am widow of late Shri Indrajit Chaudhuri, who was the son of late Lt.Gen.B. Chaudhuri and late Smt. Dipty Chaudhuri. I have two sons namely Himavat Chaudhuri (who is present in Court) and Sauryajit Chaudhuri. We have jointly agreed with Lt.Col.Mahajit Chaudhuri that the estate of late Lt.Gen.B.Chaudhuri and late Smt. Dipty Chaudhuri shall be shared by us in the following manner, namely, that Dr.Biswajit Chaudhuri shall be the exclusive owner of B-59, Defence Colony, New Delhi and Lt.Col.Mahajit Chaudhuri and Smt. Dwipanjali Roy and I along with my two sons shall be entitled to share from the sale proceeds of 1/16 Shanti Niketan, New

Delhi. We have agreed that the property must be sold within three months from today and the sale proceeds thereof be shared in the following manner, namely, 28% share to Lt.Col.Mahajit Chaudhuri, 30% to my sister-in-law Smt. Dwipanjali Roy and the remaining 42% to my branch of family, namely, me and my two sons. I undertake to hand over the vacant possession of the property to the purchaser thereof immediately on the sale of the suit property.”

2. FAO(OS) 224/2010 was disposed of on 8th March, 2011 noting that the parties would diligently perform their obligations as per their own statements. Thus on the basis of the settlement arrived at between the parties the present Decree Holder Dr. Biswajit Chaudhuri became the exclusive owner of B-59, Defence Colony. As noted above, Judgment Debtor No.2/ Smt. Dwipanjali Roy gave up all her rights in B-59, Defence Colony in lieu of her share in property No.1/16, Shanti Niketan, New Delhi and undertook that the property No.1/16, Shanti Niketan shall be sold by herself, Lt. Col. Mahajit Chaudhuri and Smt. Sreelata Chaudhuri within three months from 1st March, 2011 and that she will hand-over the possession of the first floor and barsati floor in B-59, Defence Colony in her occupation to her brother Dr. Biswajit Chaudhuri within four months from 1st March, 2011. Though parties settled the matter, the property No.1/16, Shanti Niketan, New Delhi was to be sold within three months and the three Judgment Debtors to get their respective shares, however till date for one reason or the other the said property has not been sold, resultantly Judgment Debtor No.2 has not vacated the first floor and barsati floor of B-59, Defence Colony which has to come to the exclusive ownership and possession of Dr.Biswajit Chaudhuri, the Decree Holder herein.

3. The short issue in the present petition is as to whether the vacation of the first floor and barsati floor in occupation of Judgment Debtor No.2/ Smt. Dwipanjali Roy was dependent on and to be followed only after the sale of property No.1/16, Shanti Niketan, New Delhi or was an independent decree in favour of Dr. Biswajit Chaudhuri and against Judgment Debtor No.2/ Smt. Dwipanjali Roy Chaudhuri to be executed de-hors the sale of property No.1/16, Shanti Niketan, New Delhi.

4. Learned counsel for the Decree Holder contends that the vacation of the first floor and barsati floor of B-59, Defence Colony by Judgment Debtor No.2 was independent of the sale of property bearing No.1/16, Shanti Niketan and as undertaken by Judgment Debtor No.2 she was required to vacate within four months from 1st March, 2011. Learned counsel for the Judgment Debtor No.2 argues to the contrary saying that it was a composite settlement and only after Judgment Debtor No.2 would have got her share pursuant to sale in immovable property No.1/16, Shanti Niketan she was to exercise her obligation to vacate the first floor and barsati floor of B-59, Defence Colony and hand-over the possession to her brother/ Decree Holder who became the absolute owner of the property B-59, Defence Colony by virtue of the settlement arrived at between the parties.

5. In respect of sale of property No.1/16, Shanti Niketan between the three Judgment Debtors Execution Petition 197/2011 is independently proceeding before this Court. Both the sides referred to the various orders passed in the present petition and also the orders passed in FAO(OS) No.224/2010 disposed of on 8th March, 2011. Judgment Debtor No.2/ Smt. Dwipanjali Roy on 1st March, 2011 had undertaken before this Court to give up all her rights in B-59, Defence Colony and that she would be entitled to

share of 28 % on sale of property No.1/16, Shanti Niketan which was to take place within three months and that she would hand-over the possession of the first floor and barsati floor presently in her occupation to Decree Holder Dr. Biswajit Chaudhuri within four months from 1st March, 2011. It is not the case of Judgment Debtor No.2 that since property No.1/16, Shanti Niketan is not vacant she cannot shift. As per the agreement between the parties 1/16, Shanti Niketan has to be sold and the parties would be entitled only to their respective shares in the sale consideration thereon. Thus vacation of the premises i.e. of first floor and barsati floor of B-59, Defence Colony cannot be subject to sale of 1/16, Shanti Niketan which is a subject matter of Execution Petition No.197/2011; particularly when perusal of the common order dated 4th November, 2016 passed by this Court in Execution Petition 197/2011 and Execution Petition 252/2015 reveals that the objection to the sale of property No.1/16, Shanti Niketan is on behalf of the Judgment Debtor No.2/ Ms. Dwipanjali Roy whose counsel on 4th November, 2016 submitted before the Court that the prices of real estate at Delhi are at all low and in case the property of Shanti Niketan is sold, all parties will suffer financially. The parties having entered into an agreement considering all aspects, the Judgment Debtor No.2 cannot now resile and say that she would vacate the premises only after property No.1/16, Shanti Niketan is sold and she gets her share. Vacation of the first floor and barsati floor of B-59, Defence Colony by the Judgment Debtor No.2 was not conditional upon the sale of property bearing No.1/16, Shanti Niketan and was an independent decree passed in favour of the Decree Holder and against the Judgment Debtor No.2.

6. Petition is disposed of directing Judgment Debtor No.2 to vacate the first floor and barsati floor of B-59, Defence Colony within a period of four months from today and in case Judgment Debtor No.2 does not hand-over the vacant and peaceful possession of the first floor and barsati floor to Decree Holder, the Registry will issue warrants of dispossession of Judgment Debtor No.2 from the first floor and barsati floor of B-59, Defence Colony.

(MUKTA GUPTA)
JUDGE

AUGUST 02, 2017
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