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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.6/2016, & IAs No.2936/2016 (u/O I R-10 CPC),
2937/2016 (u/O XL R-1 CPC), 98/2016 (u/O XXXIX R-1&2 CPC),
99/2016 (u/O XL R-1 CPC), 100/2016 (u/O XXVI R-9 CPC) &
102/2016 (u/S 80 CPC) & IA No.13206/2016 (of D-1 u/O XXXIX R-
4 CPC) & IA No.1024/2017 (of defendant no.8 under Section 151
CPC).

DR VIMLA MENON AND ORS Plaintiffs
Through: Mr. Jayant K. Sud, Ms. Priya Puri,
Ms. Vaishali Soni and Mr. Umang
Singh, Advs.

versus

GOPINATH MENON & ORS Defendants
Through: Mr. Vaibhav Gaggar and Ms. Smriti
Jain, Advs. for D-1.
Mr. Arnab Sethi, Proxy counsel for
D-4.
Mr. Santosh Kumar Rout and Ms.
Gargy Rajput, Advs. for D-5,6&12.
Ms. Anju Jain and Mr. Hitesh Sachar,
Advs. for D-8.
Mr. Sumit Goswami, Adv. for D-11.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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30.01.2017

1. The counsel for the plaintiffs and the counsel for defendant no.1 state that the mediation has failed.
2. The counsel for defendants no.8&9 Syndicate Bank on enquiry states that an One Time Settlement (OTS) has been arrived at with the defendant no.1 whereunder, subject to the defendant no.1 paying the OTS amount latest by 31st March, 2017, the Syndicate bank has agreed to release its

charge on A-58, Dayal Bagh Colony, Mauja Lakarpur, Near Eros Garden Surajkund, District Faridabad, Haryana and the Factory building and land at Lakari Fazalpur Industrial Area, Mini By Pass Road, Near Police Chowki, Moradabad, Uttar Pradesh – 244 001 mentioned at serial no.2&3 of Schedule-A to the plaint.

3. The counsel for the defendant no.1 states that the defendant no.1 had entered into the aforesaid OTS on the premise of mediation, on the lines in which it was proceeding, succeeding and since mediation has failed the defendant no.1 may not be able to abide by the OTS with the Syndicate Bank.

4. Be that as it may, the same does not come in the way of passing of the final decree for partition.

5. If the charge of Syndicate Bank on the properties aforesaid is not removed pursuant to the OTS, the final decree for partition would be subject to the claim of Syndicate Bank vis-a-vis the said properties.

6. Both, the counsel for the three plaintiffs and the counsel for defendant no.1, agree that the five immoveable properties mentioned in Schedule-A to the plaint are incapable of division between the parties by metes and bounds and a final decree for partition of the said properties by sale thereof and distribution of sale proceeds amongst the three plaintiffs and the defendant no.1, in terms of their respective share declare in the preliminary decree for partition, be passed.

7. The counsel for the defendant no.1 states that besides the five properties mentioned in Schedule-A to the plaint, the mother of the three

plaintiffs and the defendant no.1 as well as of their deceased brother owned a property at Chennai and which property on the demise of the mother devolved on the three plaintiffs, defendant no.1 and their deceased brother in equal share and thus the estate of the deceased brother, besides the properties mentioned in Schedule-A to the plaint, also comprises of his 1/5th share in the said Chennai property. He states that the said property be also included in the assets for partition.

8. The counsel for the three plaintiffs states that the said property being not a part of the present suit, cannot be included in this suit.

9. In this regard it may be noticed that the defendant no.1, though could have in this suit also sought partition of the said Chennai property, has not made a prayer in this regard. He however states that he has taken the said plea in the written statement and the three plaintiffs in their replication have agreed thereto and also stated that they have no objection to the same being also partitioned.

10. The counsel for the three plaintiffs on being asked to take instructions from the plaintiff no.1 Dr. Vimla Menon present in Court, though states that the mother has left a Will bequeathing the said property to the three plaintiffs, defendant no.1 and their deceased brother in equal share but states that the plaintiff no.1 Dr. Vimla Menon is not agreeable to inclusion of the said property in the decree to be passed in this suit; he states, that the defendant no.1 may file a separate suit therefor.

11. It seems that Dr. Vimla Menon is more interested in coming to the Courts than going to her clinic.

12. I have perused para 1 of the preliminary submissions of the written

statement of defendant no.1 and the response thereto in the replication. The plaintiffs have in the replication, with respect to the Chennai property, unequivocally stated “However, as the house is to be divided between the plaintiffs and defendant no.1, just as the estate of late Mr. Ravi Menon, the plaintiffs have no objection if it is made a subject matter of the present suit”. The plaintiffs, in view of their said stand, cannot now compel the defendant no.1 who is a resident of Gurgaon, to, after this suit, travel to Chennai for the purposes of instituting proceedings for partition of the Chennai house.

13. I accordingly allow the plea of the defendant no.1 for inclusion of house no.-211, Defence Officers Colony, Nandambakkam, Chennai – 600 097 in the properties subject matter of the present suit and in addition to the five immovable properties listed in Schedule-A to the plaint and declare the three plaintiffs and the defendant no.1 to be having 1/4th undivided share therein also.

14. A second preliminary decree for partition with respect to the said house be prepared.

15. The counsel for the three plaintiffs states that the plaintiffs have also in paras 2&3 of the prayer paragraphs of the plaint sought a decree for rendition of accounts against the defendants no.1&2.

16. Now that mediation has been unsuccessful, a decree for rendition of accounts in terms of prayer paragraphs 2&3 of the plaint is also passed in favour of the three plaintiffs and against the defendant no.1, directing the defendant no.1 to render accounts in terms of prayer paragraphs 2&3 of the plaint.

17. Mr. Dinesh Dayal Additional District Judge (Retd.) (Ph. No.

9810100200) is appointed as the Court Commissioner, to go into the accounts and is requested to submit the report within six months of today.

18. The fee of the Court Commissioner is fixed at Rs.1,00,000/- in lump-sum, to be borne equally by the three plaintiffs on the one hand and the defendant no.1 on the other hand and thereafter Rs.15,000/- for each sitting which the Court Commissioner holds for the purposes of rendering the report and to be also similarly shared equally between the three plaintiffs on the one hand and the defendant no.1 on the other hand.

19. The parties to appear before the Court Commissioner with prior appointment on 27th February, 2017.

20. Decree sheet be drawn up.

21. A final decree for partition of the following six properties:-

- (i) 16, DSIDC Scheme-I, Okhla Industrial Area, Phase-II, New Delhi – 110 020.
- (ii) House no.A-58, Dayal Bagh Colony, Mauja Lakarpur, Near Eros Garden Surajkund, District Faridabad, Haryana.
- (iii) Factory building and land at Lakari Fazalpur Industrial Area, Mini By Pass Road, Near Police Chowki, Moradabad, Uttar Pradesh – 244 001
- (iv) Commercial space no.B-02/30, Expo Mart, Greater Noida, Uttar Pradesh – 201 306.
- (v) House no.A-102, Trinity Towers, DLF City, Phase-V, Gurgaon, Haryana – 122 002.
- (vi) House no.-211, Defence Officers Colony, Nandambakkam, Chennai – 600 097.

is passed, by sale thereof and distribution of sale proceeds amongst the three plaintiffs and the defendant no.1 as per their shares declared in the preliminary decree for partition.

22. Since the defendant no.1 is also to render accounts to the plaintiffs, it is further directed that the sale proceeds of the share of the defendant no.1 be deposited in this Court, to be disbursed to the defendant no.1 after the accounts have been rendered and after the monies if any found to be due from the defendant no.1 to the three plaintiffs have been paid or after adjusting the same from the sale proceeds of the share of the defendant no.1 so deposited in this Court.

23. The said sale proceeds be kept in a maximum interest bearing account.

24. Decree sheet be prepared.

25. At this stage, the counsel for the defendant no.1 states that the plaintiff no.3 Ms. Nalini Menon is suffering from mental illness and is unable to look after her own affairs.

26. On enquiry, whether the plaintiff no.3 is residing with the plaintiffs no.1&2, the counsel for the defendant no.1 states that the plaintiff no.3 Ms. Nalini Menon has been admitted by the plaintiffs no.1&2 to an institute in Noida where the plaintiffs no.1&2 are paying charges of Rs.40,000/- per month.

27. The counsel for the three plaintiffs states that though the plaintiff no.3 is so admitted but whenever comes back, stays with either of the first two plaintiffs. It is further stated that in the proceedings pending for appointment of a guardian of plaintiff no.3, the defendant no.1 has already

given No Objection to the appointment of plaintiff no.1 as the guardian of plaintiff no.3.

28. Though the counsel for the defendant no.1 controverts giving of No Objection but since separate proceedings for appointment of guardian of plaintiff no.3 are pending, there is no need to delve into the said aspect in this proceedings.

29. In view of the aforesaid, all the pending applications have also become infructuous and are disposed of.

30. The counsel for the plaintiffs however states that Receiver be appointed of the immoveable and moveable properties. It is stated that large amount of stocks are lying in the factory premises, some of which are hypothecated with the Bank.

31. Now that a final decree for partition by sale of the properties and for rendition of accounts has been passed, need for appointment of a Receiver is not felt.

32. The counsel for the plaintiffs states that the Court Commissioner earlier appointed in these proceedings is holding with herself some photographs in pen drive awaiting further order of the Court.

33. The Court Commissioner earlier appointed, informed to be Ms. Sonam Anand, is directed to immediately, on service of this order, deposit all the said documents/pen drive in a sealed cover with this Court.

34. If the plaintiffs and/or the defendant no.1 desire copies thereof, they will be free to approach the Registry in this regard and which is directed to then open the sealed cover, make copies including the contents of the pen drive, and supply the same to the counsel for the plaintiffs and the counsel

for the defendant no.1 and re-seal the contents.

35. The application if any in this regard be considered by the Registry.

RAJIV SAHAI ENDLAW, J

JANUARY 30, 2017
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