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

Date of decision: 3rd December, 2018

+ **CS(OS) 160/2014, I.As. 1034/2014, 12622/2018 & 16170/2018**

S C AGGARWAL Plaintiff

Through: Mr. Hemant Chaudhri and Mr. Arjun
Bhaskar, Advocates. (M:9810035336)

versus

B K GOEL

..... Defendant

Through: Mr. Pardeep Dhingra, Ms. Shalini
Dhingra and Mr. Nishant Kumar,
Advocates for D-2. (M:9430009409)
Mr. Sri Harsha Peechara, Standing
Counsel for SDMC with Ms. Vidhi
Jain, Advocate. (M:9717466788)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit relates to Shop No. 53, Mehar Chand Market, Lodhi Road, New Delhi. The Plaintiff and the Defendant have been held to be owners of 50% of the shop vide a detailed judgment/order passed in Application No.4726/2016 under Order XII Rule 6 on 19th July, 2016. The operative portion of the said judgment reads as under: -

“23. Accordingly, the present application is allowed and a preliminary decree is passed declaring that the plaintiffs and the defendant No.1 are entitled to 50% undivided share each in the subject shop. This is however without prejudice to the plea taken by the defendant No.2 that she is in settled possession and occupation 25% area of the shop with the entrance from the front side and the plaintiffs are in settled possession of the remaining 75% area with the

entrance from the back side, as per an alleged mutual understanding purportedly arrived at between the parties.”

2. The Court has thus passed a preliminary decree declaring the Plaintiff and Defendant No.1 as being entitled to 50% undivided share each in the subject shop. It is, however, a matter of record that at the moment Defendant No.2 who is the subsequent purchaser from Defendant No.1 is in possession of 25% area of the shop and the remaining 75% is in possession of the Plaintiff. The Defendant No.2 is running a mobile phone and accessories shop from the said location.
3. After the passing of the preliminary decree, parties tried to mediate the disputes which, however, did not result in a settlement. On 19th September, 2018, after hearing submissions, this Court had observed that from the submissions made by the parties, physical partition by metes and bounds is not feasible. Accordingly, a Valuer was appointed to value the shop and file a report before this Court.
4. The Valuer has submitted the report and has valued the fair market value of this shop at Rs.3,87,10,761/-
5. Learned counsel for the Plaintiff submits that the valuation report having been received but his client is willing to increase the value of the shop and pay to the Defendant 50% of the said value. He accordingly prays for an open bidding to be held between the Plaintiff and the Defendant. Mr. Hemant Chaudhri, learned counsel appearing for the Plaintiff, relies upon ***Aloka Dudhoria and Ors. v. Goutam Dudhoria and Ors., A.I.R. (2010) SC 53.***
6. On the other hand, Mr. Pardeep Dhingra, learned counsel appearing

for the Defendant, submits that the open bidding would result in injustice as his client has been operating and running his shop since seventeen years from this location. He submits that the scheme of the Partition Act, 1893 can always be moulded in order to ensure that the partition is equitable. He specifically relies upon a judgment of the Supreme Court in ***Badri Narain Prasad Choudhary and others v. Nil Ratan Sarkar, A.I.R. (1978) SC 845*** to argue that when one person is in occupation and is a co-sharer, a preferential right ought to be given. It is further submitted that the grant of preliminary decree has been challenged in appeal by the Defendant in RFA(OS) 74/2018. He relies upon the order dated 16th October, 2018 passed by the learned Division Bench.

7. Learned counsel for the Plaintiff has, thereafter in rejoinder, submitted that since his client is willing to pay a higher amount than given by the Valuer, he should be allowed to purchase the Defendant's share and even the terms and conditions for payment should be determined by the Court.

8. Insofar as the preliminary decree is concerned, the same was passed on 19th July, 2016 and the Defendant did not challenge the same till October, 2018. This Court passed the order for valuation on 19th September, 2018. The appeal is filed after considerable delay and notice has been issued by the Ld. Division Bench, in the condonation of delay application. No stay has been pressed.

9. Notice was issued to the SDMC pursuant to which the Ld. Counsel for the SDMC has put in appearance. Ld. Counsel has handed over a letter dated 27th November, 2018 which has communicated to the parties that the charges for conversion from leasehold to freehold shall be Rs. 17,10,350/- +

ground rent upto 31st December 2018 of Rs. 10,156/-.

10. The parties are present today. The matter was heard in the morning and thereafter parties were directed to place before the court, the value which they assign to the shop with the agreement that if the court accepts the same, the said party would be willing to pay 50% of the value to the other side. Parties were also asked to place the terms which they consider reasonable. Both sides have accordingly handed over their respective amounts and the terms to the Court, which has been perused. The sheets so handed over by both sides have been retained on record. They shall be placed in a sealed cover along with the records of the suit.

11. A perusal of the decisions cited by the parties shows that the Court, can consider the facts and circumstances of each of the co-sharers, also consider special circumstances and exercise discretion in an equitable manner. If any party is required to be given a preferential right, the same can be considered by the Court.

12. The preliminary decree is more than two years old and despite repeated opportunities being given to the parties, there has been no amicable resolution and thus this Court on 19th September, 2018 appointed a Valuer to value the property. Disputes of such a nature cannot be allowed to remain pending endlessly. The shares of both the parties have been clearly determined. The parties were asked to submit as to what they would consider as the fair market value of the property which each of them would be willing to pay to the other. The terms and conditions are also to be fixed by the Court in a suit of this nature where the final order for partition is to be passed. Clearly there is no possibility of the shop being feasibly divided inasmuch as the frontage of the shop is merely ten feet. It is located in

Mehar Chand Market which is a prime commercial area in South Delhi. The Court, considering the various factors including the valuation given by the Court appointed Valuer as also the amounts submitted by both the parties in sealed envelope to the Court, as to what they consider as the fair market value holds that the interest of justice would be met if the final decree of partition is passed in the following manner: -

- (i) The Defendant shall pay to the Plaintiff a sum of Rs.2.5 crores for 50% share of the suit property which is way above the total market value as determined by the Valuer of Rs.3.87 crores.
- (ii) The Defendant, shall be entitled to avail of financial support from any recognized bank/financial institution for the purpose of arranging finances to make payment to the Plaintiff.
- (iii) The application for conversion of the property from leasehold to freehold is pending before the SDMC. The charges as mentioned in the letter dated 27th November, 2018 of the SDMC, shall now be paid by the Defendant to the SDMC within a period of 30 days. The SDMC shall process the application for freehold within 15 days thereafter.
- (iv) The Defendant shall be entitled to arrange for finances as may be required. The Defendant shall pay the sum of Rs.2.5 crores after deducting the Plaintiff's share of approximately Rs.8.55 lakhs which are the conversion charges.
- (iv) The said amount of Rs.2.5 crores shall be paid by the Defendant to the Plaintiff on or before 30th April, 2019. No further extension shall be granted in this respect. The Defendant shall deposit a sum of Rs.10 lakhs within a period of two weeks

in this Court in order to bind the Defendant to the present terms, which he is agreeable to.

- (v) The electricity charges for 75% portion of the property shall be borne by the Plaintiff till today for the Plaintiff's meter. In respect of other charges and taxes, both parties shall be liable to pay their proportionate share of 50% each till date. Any penalty that may be levied due to delayed payment of any taxes by the Plaintiff, if any, shall be borne solely by the Plaintiff.
- (vi) If the Defendant does not make payment of Rs.2.5 crores on or before 30th April, 2019, Rs.10 lakhs would be forfeited and shall be released to the Plaintiff. At that stage, the Plaintiff would be entitled to pay a sum of Rs.2.5 crores to the Defendant to purchase the Defendant's 50% share of the property.

13. The suit is decreed in the above terms. Decree sheet be drawn. All pending I.As. are disposed of.

14. List on 18th December, 2018 for the Defendant to bring a demand draft for a sum of Rs.10 lakhs in favour of the Registrar General of this Court. The said sum to be kept in a fixed deposit by the Registrar General so as to enable interest to accrue on the same.

PRATHIBA M. SINGH
JUDGE

DECEMBER 03, 2018

Rekha