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

+ **CS(OS) 1823/2000**

ANIL KUMAR SANGHI AND ORS.

..... Plaintiffs

Through : Mr.Pravir K Jain, Advocate.

versus

HARI KISHAN SANGHI AND ORS.

CF+

..... Defendants

Through : Ms.Neelam Rathore and Mr.Shantanu
Devansh, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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16.08.2018

IA No.10770/2018

This partition suit was disposed of vide order dated 02.11.2012 in terms of the compromise arrived at between the parties as per the family settlement dated 16.07.2012 wherein the shares of the parties were only determined.

Undisputably, the suit property has not been partitioned by metes and bounds and in fact all the family members are in the process of the selling of the subject property.

It is submitted by both the counsels Registry is requiring the parties to pay the stamp duty, which is payable per law only after the sale of the subject property. In support of contentions, the learned counsel for the plaintiff / applicant has relied upon *Sushil Kumar Gupta vs Prem Gupta & Others* 2013 (135) DRJ 341 (DB) wherein it was held:-

“11. The discussion qua the aforesaid issue is contained in paragraphs 40 & 41 which are reproduced hereinunder:

'40. xxx xxx

41. But it is not that every decree in a partition suit would be required to be drawn up on a stamp paper. Only those decrees will be required to be drawn up on a stamp paper, which divide any property in severality amongst co-owners. In the instant case neither by award made by C.K. Daphtary nor by order dated 15-4-1983 the property has been ordered to be divided or agreed to be divided in severality. Only a tentative arrangement was made for enjoying the property separately, which was only a temporary measure whereby the parties continued to be the joint owners of each and every part of the property though separately enjoying separate portions. The decree nowhere provided for separation or division of the property in severality since it was held that the property is incapable of being divided in two equal shares or that the division by metes and bounds was not possible. Therefore, the mode suggested was to sell the property and then divide sale proceeds in equal shares. Such an award or a decree would not come within the definition of "instrument of partition", pursuant to the said decree passed in the suit, in case the property is sold, the rights, title and interest of the appellant and the respondents would come to an end, on sale deed being drawn and executed on a stamp paper, after the sale is confirmed by the Court. Only the said instrument of sale will be required to be stamped and thereafter got registered. Such a decree as was passed on 15.4.1983, is not required to be drawn on a stamp paper. Only such of the decrees are required to be drawn on a stamp paper, which allot and vest particular share in each co-sharer and not those decrees, which only make a provision for sale of the property. In later decrees only the instrument of sale would be required to be drawn on a stamp paper so as to vest exclusive rights in the property in favour of the auction purchaser.'

14. The result of the aforesaid is that the impugned order is set aside holding that there would be, no requirement of the decree being engrossed; on a non-judicial stamp paper as it is not an instrument of partition, there being no division by metes and bounds of the property.”

The learned counsel for the defendants appearing on advance notice also does not dispute the above submissions.

In the circumstances, the Registry is directed to prepare the

decree sheet without insisting upon the payment of the stamp duty and the learned counsels on behalf of their clients undertakes to file the photocopy/certified copy of the registered sale deed in this Court once the property is sold.

The application stands disposed of in above terms.

Order *dasti*.

YOGESH KHANNA, J

AUGUST 16, 2018

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