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

+ CS(OS) 500/2009

SURINDER PAL SINGH Plaintiff
Through: Mr. Mukesh Anand, Adv.

Versus

JAGDISH SINGH (DECEASED) THROUGH LRS Defendant
Through: Mr. S.N. Kalra, Ms. Jyoti Sharma and
Ms. Divya Sharma, Advs. for LR-(ii).
Mr. Rajesh Rawal, Adv. for LR-(i),
(iii) & (iv).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.01.2018

1. On 18th October, 2016, a preliminary decree for partition of House No.B-4/182, Safdarjung Enclave, New Delhi was passed, declaring the deceased defendant Jagdish Singh and plaintiff Surinder Pal Singh to be having 50% share each in the property and as far as the share of Jagdish Singh is concerned, the distribution thereof between the heirs of Jagdish Singh was left subject to the outcome of the separate suit pending between the legal representatives (LRs) of Jagdish Singh.

2. However, on 18th October, 2016, instead of appointing a Court Commissioner to explore the possibility of division of the property by metes and bounds, the parties were referred to Mediation Cell of this Court to explore the possibility of amicable settlement.

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3. Mediation has remained unsuccessful and though about one and a half years have passed but the parties are unable to arrive at any amicable solution.
4. The counsel for the plaintiff Surinder Pal Singh states that the parties initially explored the possibility of division by metes and bounds and thereafter, re-development of the property but no settlement could be arrived at. It is further stated that the plaintiff Surinder Pal Singh is willing to transfer his 50% share for market price thereof to the LRs of Jagdish Singh.
5. On enquiry as to the value of the said 50% share, the counsel for the plaintiff Surinder Pal Singh states the figure of Rs.8 crores.
6. The counsel for LRs Balbir Kaur, Onkar Singh and Balvinder Kaur, of deceased Jagdish Singh controverts that the value of plaintiff's 50% share is Rs.8 crores. He also states that the hearing be adjourned by three to four weeks and his clients would find a builder who would be willing to purchase the 50% share of the plaintiff Surinder Pal Singh at the market value thereof.
7. The stand of the counsel for LR Arvinder Pal Singh of deceased Jagdish Singh is the same as the stand of the other LRs.
8. I am of the view that nearly one and a half years have passed since the preliminary decree for partition and the parties having been unable to mutually come up with a solution, there is no need to defer the hearing any further. To me, it appears that the only possibility is to pass a final decree for partition of the property, by sale thereof and by distribution of sale proceeds amongst the parties in accordance with their respective shares in the property as declares in the preliminary decree for partition and by giving an opportunity to the parties to, before selling the property to outsider(s),

hold *inter se* bids and whichever party's bid is the highest, purchasing the share/s of the others against delivery of vacant peaceful physical possession of the portion of the property in possession of the selling party/ies.

9. On enquiry, it is stated that the parties only are in physical possession of the property and no outsider is in possession of the property.

10. The counsels for LR's of Jagdish Singh however state that a Commissioner be appointed to explore the possibility of division of the property by metes and bounds.

11. The said prayer cannot be granted today, after one and a half years and particularly when the parties in the said interregnum have been unable to come up with any amicable solution. Even otherwise, it is evident from the aforesaid that division of the existing structure by metes and bounds would not be beneficial and would not entitle any of the parties to reap full benefits of the property.

12. The counsel for LR's Balbir Kaur, Onkar Singh and Balvinder Kaur of defendant Jagdish Singh then states that Test.Cas. No.97/2010 is also listed today before this Court and if the property is sold, there would be nothing left to inherit.

13. There is no merit in the said contention either. The order with respect to the sale proceeds of 50% share of Jagdish Singh can be sought in the suit/proceeding *inter se* the LR's of defendant Jagdish Singh.

14. Accordingly, a final decree for partition of House No.B-4/182, Safdarjung Enclave, New Delhi is passed, of sale of the property and of

distribution of the sale proceeds thereof in accordance with the shares of the parties as declared in the preliminary decree for partition and subject to the distribution of the sale proceeds of the share of defendant Jagdish Singh being subject to the orders in the *inter se* proceedings between the LRs of Jagdish Singh.

15. However, it is further provided that the parties, for a period of three months herefrom, shall attempt *inter se* bidding and purchase of share of one or more of the parties by the other parties and only if the parties fail in the said *inter se* bidding within three months hereof, shall either party be entitled to apply for execution of this final decree for partition of sale of the property.

16. It is clarified that the parties, before making *inter se* bids, shall arrive at a consensus of the percentage of the bidding amount as earnest money and the time for payment of the balance sale consideration and whichever party's bid is the highest, will comply with the said conditions.

17. The parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 09, 2018

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