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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1059/2012 & IA No.223/2016 (u/O XXVI R-10 r/W R-14
CPC)
S.K. CHOPRA Plaintiff

Through: Mr. Lalit Gupta & Mr. Siddharth
Arora, Advs.

Versus

V.N CHOPRA & ORS Defendants
Through: Mr. Rajesh Chopra, defendant
No.1(b) in person.
Mr. Amit Sanduja, Adv. for D-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.03.2018

1. In this suit for partition of property No.C-204, Anand Vihar, Delhi, as far back as on 6th April, 2015, a preliminary decree for partition was passed declaring the legal heirs of deceased defendant no.1 i.e. defendants no.1(a) to 1(d) jointly and the legal heirs of late Brig. T.R. Chopra (Retd.) i.e. defendants no.2&3 jointly to be entitled to one third share each in the suit premises. Though not so specified in the order passing the preliminary decree but it follows and the counsel for the legal heirs of the plaintiff and the counsel for the defendants no.2&3 Dr. (Mrs.) Bindu Narain and Dr. Rakesh Chopra and the defendant no.1(b) Rajesh Chopra present in person agree that the remaining one-third share in the property is of the legal heirs of the plaintiff.

2. The said preliminary decree for partition is stated to have not been challenged and to have attained finality.

3. Notwithstanding the aforesaid preliminary decree having been passed nearly three years back, no final decree for partition is stated to have been passed as yet.
4. The counsel for the plaintiff states that legal heirs of defendant no.1 after the preliminary decree for partition, raised an objection that in terms of the Will of the common predecessor, the property could not be sold but which contention was also decided against the legal heirs of the deceased defendant no.1 vide order dated 5th July, 2017 which has also attained finality. Attention is also drawn to the orders dated 21st August, 2017 and 13th November, 2017 recording that the property cannot be partitioned by metes and bounds. On enquiry, it is stated that the legal heirs of the defendant no.1 only are in possession of the property.
5. The counsel for the plaintiff and the counsel for the defendants no.2&3 however inform that the parties have been negotiating with builders for re-development of the property and seek adjournment for the said purpose.
6. The defendant no.1(b) Mr. Rajesh Chopra also joins in the said request.
7. Once a preliminary decree for partition has been passed and it is not in dispute that the property cannot be divided by metes and bounds, a final decree for partition of sale of the property and distribution of sale proceeds in accordance with the preliminary decree for partition has to follow and the proceedings cannot be kept pending.
8. If the parties desire to themselves mutually partition the property in any other way or to have the property re-developed, the final decree for

partition will not prevent them from doing so. Such intent if any of the parties can be taken care of by permitting each of the parties to also participate in the sale.

9. Accordingly, a final decree for partition of property No.C-204, Anand Vihar, Delhi is passed, of sale of the property and of distribution of the sale proceeds amongst the parties as per their shares declared in the preliminary decree for partition dated 6th April, 2015 and with the following directions:

(i) that this final decree for partition will not come in the way of,
a) the parties, if mutually agreeable, having the leasehold rights in the land underneath the property converted into freehold in their joint names; and / or
b) the parties, with mutual consent, re-developing the property either themselves or with the assistance of any builder and mutually partitioning the newly built property amongst themselves; and,

(ii) in the event of sale of the property, all the parties shall be entitled to participate in the said sale and to purchase the share of others, if the bid of the purchasing party is the highest and the parties shall also be entitled to make *inter se* bids;

10. The parties are left to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 09, 2018

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