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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1342/2011
SUGEETA CHHABRA Plaintiff
Through: Mr. Shadan Farasat, Adv.

versus

HARISH NAYAR Defendant
Through: Mr. R. P. Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
20.03.2018

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1. The counsels for the parties state that in this suit for partition of property No.41, Prithviraj Road, New Delhi, a) a preliminary decree for partition was passed on 3rd January, 2014, declaring the plaintiff to be having 1/4th share in the said immovable property; and, b) a final decree for partition was passed on 1st October, 2015 granting liberty to the parties to take joint steps to identify a prospective buyer of the said property and share the sale proceeds in proportion to their respective shares therein and if the parties are unable to take joint steps or do not cooperate with each other, then permitting either party to, after six months, seek execution of the decree in accordance with law.
2. The counsels also state that the plaintiff, besides the relief of partition of the said immovable property, had *inter alia* also sought recovery of *mesne* profits of the 1/4th share of the plaintiff in the immovable property which is

otherwise in exclusive possession of the defendant. The counsels state that the parties have led their respective evidence on the aspect of *mesne* profits and the aspect of *mesne* profits is ripe for final hearing.

3. The counsels have been heard.

4. The counsel for the plaintiff states that the plaintiff claims *mesne* profits at the rate of Rs. 1 lac per month with effect from 1st December, 2011 till the property is sold.

5. On further enquiry, it is stated that the property has not been sold till now as the parties in spite of best efforts, have been unable to get a buyer.

6. The counsel for the plaintiff, on enquiry states that the plaintiff has not sought execution since the defendant is her brother.

7. On further enquiry, it is stated that the construction on the property is old, comprising single storeyed bungalow with outhouses/servant quarters and open land and the entire property is in occupation of defendant and his family.

8. The counsel for the defendant states that no part of the property has ever been let out.

9. The counsel for the plaintiff, on enquiry as to the evidence led, states that evidence has been led of letting out of properties on the same road at Rs.16 lacs per month, but agrees that the same is with respect of a newly constructed flat with all modern amenities.

10. The counsel for the defendant has left the rate of *mesne* profits to the judicial notice of the Court.

11. An old bungalow, under litigation for long and without any improvements having been made thereon, even though situated on a large piece of land and at a prime location, does not have many takers, particularly on rent. Judicial notice can also be taken of the fact that construction activity on the same is restricted owing to the same being situated in the Lutyen's Bungalow Zone. No person would be interested in taking such a property on rent, to make which habitable, considerable expenditure has to be incurred.

12. Judicial notice can be taken of other properties on Prithviraj Road in a similar state, which none is interested in taking on rent.

13. Considering all the said aspects / factors, it is deemed appropriate to fix the rate of *mesne* profits from 1st December, 2011 till six months after the final decree dated 1st October, 2015, that is, till 31st March, 2016, at the rate of Rs. 25,000/- per month and with effect from 1st April, 2016 till the date of sale of the property, at the rate of Rs. 50,000/- per month.

14. The amount so due under the decree, shall however be deductible from the sale proceeds of the share of the defendant in the property, on the property being sold.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 20, 2018

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