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

+ **CS(OS) 161/2016, IA No.4290/2016**

HARMINDER PAL SINGH GULIANI Plaintiff

Through : Mr.Rakesh Kumar, Ms.Anubha
Singh, Advocates.

versus

SURINDERJIT SINGH & ORS.

Defendants

Through : Mr.Manish Kumar, Advocate for
defendant no.1. defendant no.1 in
person.

Mr.Bipin Kumar, Advocate for
defendant no.2.

Mr.S.S.Sidhu, Ms.Ritu Jain,
Advocates for applicant. Applicant in
person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **23.08.2018**

IA No. 10070/2018

1. This application is under Order I Rule 10 CPC for impleading of Mr.Rajesh Guliani son of Shri Hansraj as a defendant.
2. This is a suit for partition, declaration cancellation of documents and mandatory injunction between the parties who stand in near relation to each other. The plaintiff has sought the partition of property No. 704/683/206 Village Rajpur Chhawani, Delhi also known as plot no 242 A, Rajpur Chhawani, Delhi - 110009 measuring 962 sq. yds. The plaintiff has prayed the property be partitioned by dividing it by metes and bounds between the plaintiff and his siblings viz. defendant no.1 and 2.
3. It is submitted by the applicant out of 962 sq. yds. area, the

plaintiff along with his brother, his mother and sisters had sold a part of the land ad-measuring 298 sq. yds. on 06.12.1994 and had executed various documents viz. GPA and SPA in favour of the father of the applicant; agreement to sell in favour of the applicant; undertaking, affidavit and Will etc. The possession of the aforesaid property was also handed over to the applicant at the spot and hence it is alleged this property cannot be partitioned and the applicant being a necessary party be made a defendant in order to enable the Court to effectually and completely adjudicate upon the suit property.

4. Admittedly, the property is coming from the parents of the parties herein and the suit being based on inheritance. The applicant, admittedly, is not in blood relation to the parties and his cause of action is different to that setup in the suit. If the applicant is claiming an independent right in the property he may seek appropriate remedy but in a suit for partition between the children/siblings for sharing the properties, the applicant cannot be said to have any say and hence this application being devoid of merits, is dismissed.

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5. The learned counsels for the parties submitted the matter have been settled between the parties in terms of settlement agreement 21.05.2018 duly signed by all the parties and settling the entire disputes in terms of para 9(a) to 9(i) as below:

“9 (a) The parties herein acknowledge and agree that the site plan, Annexure - A, is the true and correct site plan of the property in dispute and has an area of 960

sq. yards.

b. It has been agreed by the parties that the two portions Marked A shaded WHITE bounded in RED, admeasuring 200 sq. yards and 140 sq. yards as shown in the Site Plan, Annexure - A, shall belong exclusively to the Defendant No. 1 i.e. Sh. Surenderjit Singh Guliani.

c. It has been further agreed by the parties that the two portions Marked B shaded and bounded in GREEN, admeasuring 240.33 (= 240) sq. yards and 58.33 (=58) sq. yards, as shown in the Site Plan, Annexure - A, shall belong exclusively to the Plaintiff i.e. Sh. Harminder Pal Singh Guliani.

d. It has been further agreed by the parties that the portion Marked C shaded and bounded in ORANGE, admeasuring 232 sq. yards, as shown in the Site Plan, Annexure - A, shall belong exclusively to the Defendant No. 2 i.e. Mrs. Manjeet Kaur Narula.

e. That the passage marked YELLOW admeasuring 90 Sq yards shall remain common amongst the parties herein i.e. the Plaintiff, Defendant No. 1 and 2, each entitled to 30 sq. yards, as shown in the Site Plan, Annexure - A. However, the passage shall be indivisible and always remain common for the ingress and egress of the property.

f. In the aforesaid manner, the parties have agree to distribute the property, area wise as under:-

i. Plaintiff (Portions B) r area in GREEN / YELLOW - $240+58+30=328$ sq. yards.

ii. Defendant No. 1 (Portions A) - area in WHITE/ YELLOW - $200+140+30=370$ sq. yards

iii. Defendant No. 2 (Portion G) - area in ORANGE/ YELLOW- $232+30=262$ sq. yards

g. The Defendant No. 1 has already sold his portion Marked A shaded WHITE bounded in RED, admeasuring 200 sq. yards to Defendants No; 3, 4, 5 and 6 i.e. Mrs. Geeta Yadav, Mr. Kailash Yadav, Mr. Rakesh Yadav; and Mr. Mangal Chand Yadav respectively in the present suit and has handed over the possession to them. Accordingly, the Plaintiff and Defendant. No. 2 acknowledge and admit the sale of the said portion by the Defendant No. 1 to the said Defendants No.3,4,5, and 6. The Plaintiff and Defendant No. 2 shall never raise any claim whatsoever against the said Defendants No.3,4,5, and 6 in the present suit. The Plaintiff shall accordingly, withdraws his prayer! in the suit for cancellation of the said sale against the said Defendants No.3,4,5, and 6 in the present suit.

h. The Defendant No. 1 has constructed to (sixteen) flats in his portion Marked A shaded WHITE bounded in

RED, admeasuring 140 sq. yards.:

i. The Defendant No. 1 has already sold the one flat No. T-1 (on 3rd Floor) admeasuring 35 sq. yards to Defendant No. 7 and 8 in the present suit i.e. Ms. Khusbhu Soni and Mr.Satish Gautam respectively by virtue of Sale Deed dated 07.01.2015 registered at No. 265, Volume No. 5484 Book No. 1 on pages 24 to 31. The Plaintiff acknowledges and admits the sale of the said flat by the Defendant No. 1 to the said Defendants No. 7 and 8 and further admits the execution and registration of the aforesaid sale deed by the Defendant No. 1 in favour of Defendant no. 7 and 8. The Plaintiff shall accordingly, withdraws his prayer in the suit for declaration of the said sale deed as null and void against the said Defendants No.7 and 8 in the present suit.

ii. The Defendant No. 1 has already sold the one flat No. S-3 (on second Floor) admeasuring 32 sq. yards to Defendant No. 9 in the present suit i.e Ms. Renu Rani by virtue of Sale Deed dated 07.04.2015 registered at No. 4172, Volume No. 5628 Book No. 1 . on pages 115 to 122. The Plaintiff acknowledges and admits the sale of the said flat by the Defendant No. 1 to the said Defendant No. 9 and further admits the execution and registration of the aforesaid sale deed by the Defendant No. 1 in favour of Defendant no. 9. The Plaintiff shall accordingly, withdraws his prayer in the suit for declaration of the said sale deed as null and void against the said Defendant No.9 in the present suit.

iii. The Defendant No. 1 has already sold the one flat No. T-3 (on third Floor) admeasuring 32 sq. yards to Defendant No. 10 in the present suit i.e. Pawan Kumar by virtue of Sale Deed dated 07.04.2015 registered at No. 4171, Volume No. 5628 Book No. 1 on pages 107 to 114. The Plaintiff acknowledges and admits the sale of the said flat by the Defendant No. 1 to the said Defendant No. 10 and further admits the execution and registration of the aforesaid sale deed by the Defendant No. 1 in favour of Defendant no. 10. The Plaintiff shall accordingly, withdraws; his prayer in the suit for declaration of the said sale deed as null; and void against the said Defendant No. 10 in the present suit.

iv. The Defendant No. 1 has already sold the one flat No. UG-4 (on UG floor) admeasuring 32 sq. yards, to Defendant No. 11 in the present suit i.e. Mr. Promila Seth by virtue of Sale Deed dated 08.01.2015 registered at No. 365, Volume No. 6062 Book No. 1 on pages 137 to 145. The Plaintiff acknowledges arid admits the sale of the said flat by the Defendant No. 1 to the said Defendant No. 11 and further admits the execution and

registration of the aforesaid sale deed by the Defendant No. 1 in favour of Defendant no. 11. The Plaintiff shall accordingly, withdraws his prayer in the suit for declaration of the said sale deed as null and void against the said Defendant No. 11 in the present suit.

V. Since, the Defendant no. 1 has got 370 sq. yards as his share in comparison to 320 sq. yards to Plaintiff and 262 sq. yards to the Defendant no. 2, therefore the Defendant no. 1 has agreed to transfer one flat No. UG - 1 (on upper ground floor) to the Plaintiff; one flat No. UG-2 (on upper ground floor) to Defendant no. 2 and one flat no. T-4 (on third floor) jointly to the Plaintiff and Defendant no. 2. The Defendant no. 1 shall execute the necessary documents in respect of these flats in favour of the plaintiff and Defendant no. 2 respectively, within six (6) months.

i. The prayer (i) in the suit for a decree for partition may be decreed in terms of the present settlement agreement however, the rest of the prayers in the suit shall be withdrawn by the Plaintiff.”

6. It is stated the agreement so arrived at between the parties is voluntary, lawful and there is no coercion or undue influence from any corner.
7. In the circumstances the suit is decreed in terms of the settlement agreement dated 21.05.2018. Decree sheet be prepared and para 9(a) to 9(i) shall form part of the decree. The suit stands disposed of.
8. Since the matter is settled through mediation, the plaintiff shall be entitled to refund of the Court fee as per the provisions of the Court fee Act.
9. All pending application, if any, also stands disposed of.

YOGESH KHANNA, J

AUGUST 23, 2018

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