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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2250/2012, IA No.13527/2012 (u/O XXXIX R-1&2 CPC),
IA No.3647/2017 (u/S 151 CPC) & IA No.12740/2017 (u/O XX R-18
r/w S-2(2) CPC)

PREM PARKASH SIKKA Plaintiff

Through: Mr. Devraj Singh, Adv.

Versus

ASHOK KUMAR SIKKA AND OTHERS Defendants

Through: Mr. Ashish Verma, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.05.2018

1. The counsel for the defendant no.1 Ashok Kumar Sikka states i) that though the plaintiff instituted this suit for partition of several properties but vide order dated 4th February, 2016, the present suit has been confined to as for partition of property No.196, Raja Garden, New Delhi; ii) that according to the case set up by the plaintiff in the plaint, the plaintiff has 1/6th share in the property and the defendants no.1 and 2 Ashok Kumar Sikka and Seema Mahindroo also have 1/6th share each in the property and the defendant no.3 Raj Kumari Bhatla has remaining half share in the property; iii) that the defendants no.2 and 3 have filed written statements in this suit disclaiming any share in the property and confirming that the defendant no.1 viz. Ashok Kumar Sikka is the sole absolute owner of the property; iv) that it is also the plea of the defendant no.1 in his written statement that the defendant no.1, under the Will of his father Salig Ram Sikka, is the sole and absolute owner of the property; v) that however the defendant no.1, in an attempt to curtail litigation, is agreeable to the plaintiff having 1/6th share claimed by him in

the property and has filed IA No.12740/2017 in this regard stating so; vi) that a preliminary decree for partition be passed declaring the plaintiff to be having 1/6th undivided share in the property and the defendant no.1 Ashok Kumar Sikka to be having the remaining 5/6th share in the property.

2. It is also informed that the defendant no.2 Seema Mahindroo has passed away on 19th March, 2018 and copy of her death certificate is handed over in the Court and taken on record.

3. On enquiry, it is informed that defendant no.2 Seema Mahindroo, after filing the written statement as aforesaid, was appearing only intermittently and not contesting the suit.

4. None appears for defendants no.2 and 3 today also.

5. In the facts aforesaid, the substitution of legal heirs of defendant no.2 Seema Mahindroo is exempted.

6. On enquiry, it is stated that the defendant no.1 is in possession of the ground floor of the property aforesaid and the plaintiff is in possession of the first floor of the property aforesaid and there are no further floors in the property.

7. The counsel for the plaintiff confirms the aforesaid and has no objection to a preliminary decree for partition being passed.

8. Accordingly, a preliminary decree for partition is passed declaring the plaintiff Ashok Kumar Sikka to be having 1/6th undivided share in the property no.196, Raja Garden, New Delhi and defendant no.1 Ashok Kumar Sikka to be having the remaining 5/6th share in the said property.

9. Decree sheet be drawn up.

10. Both counsels, under instructions from the respective parties, agree that the property as it stands today is indivisible by metes and bounds.
11. It is thus quite obvious that a final decree for partition has to be passed of sale of the property and of distribution of sale proceeds amongst the parties as per their shares under the preliminary decree, with right to the parties to make *inter se* bids.
12. The plaintiff present in person, on enquiry as to the value of the property, says that the value will be above Rs.6 crore.
13. The counsel for the defendant no.1 states that the defendant no.1 is willing to sell his 5/6th share to the plaintiff or his nominees upon the plaintiff / his nominee paying Rs.5 crores to the defendant no.1.
14. The plaintiff then states that the plaintiff is not in a position to pay Rs.5 crores and is not in a position to arrange a buyer who will give Rs.5 crores to the defendant no.1.
15. At this stage, the defendant no.1 states that though according to him the value is not Rs.6 crores but for the sake of continuity of residence, he is willing to pay Rs.1 crore for purchasing the 1/6th undivided share of the plaintiff.
16. The same also is not agreeable to the plaintiff who now gives two options. It is stated that either the defendant no.1 gives Rs.2 crores for the plaintiff's 1/6th share or the property be re-constructed by constructing four flats thereon, with the plaintiff getting one of the said flats.
17. A decree on terms proposed as second option is found to be unimplementable and in-executable inasmuch as the re-construction of the property entails performance of a continuous duty and which cannot be

supervised by the Court.

18. Since the plaintiff has put the value of the property at Rs.12 crores, he has been asked to purchase the 5/6th share of the defendant no.1 or arrange purchase thereof for Rs.10 crores.

19. The plaintiff bluntly refuses the same as well.

20. In the circumstances, the offer of the defendant no.1 of purchasing 1/6th share of the plaintiff for Rs.1 crore is accepted and a final decree for partition is passed, of sale / release by the plaintiff of his 1/6th share in the property to the defendant no.1 or his nominee for a consideration of Rs.1 crore net and on the following terms and conditions:

- (i) The defendant no.1 to, out of Rs.1 crore, on or before 11th May, 2018, pay a sum of Rs.15 lacs to the plaintiff by way of earnest money forfeitable by the plaintiff, if the defendant no.1 does not pay the balance amount of Rs.85 lacs within the date stipulated;
- (ii) The balance amount of Rs.85 lacs be paid by the defendant no.1 to the plaintiff on or before 4th June, 2018;
- (iii) The plaintiff to, against receipt of the said sum of Rs.1 crore, hand over vacant peaceful physical possession of the entire portion of the property in his possession to the defendant no.1 and at the cost and expense of the defendant no.1 execute and register the documents of transfer, whether they be by way of Sale Deed or Release Deed, of his 1/6th share in the property in favour of the defendant no.1/ or his nominee;

- (iv) If the plaintiff, inspite of the defendant no.1 offering the consideration within the aforesaid time fails to vacate his part of the property and / or sign the documents, the defendant no.1 shall be entitled to deposit the consideration amount in this Court and to seek warrants of possession with respect to the portion in possession of the plaintiff and execution of the Sale Deed through the process of the Court; and,
- (v) In the event of the defendant no.1 failing to comply with his obligation, either party will be entitled to execute the decree by sale of the property to third parties at the cost and expense of the parties, as per their shares under the preliminary decree and distribution of sale proceeds amongst them as per their respective shares.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 01, 2018

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