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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2196/2012 & IAs No.22773/2014 (u/O XXXIX R-1&2 CPC)
& 1488/2017 (u/S 2 of Partition Act, 1893)
DR. MONICA SOOD Plaintiff

Through: Mr. Manoj and Ms. Aparna Sinha,
Advs.

Versus

KUNAL BOSE (DECEASED) THROUGH LR & ANR ..Defendants

Through: Mr. Bhavook Chauhaan and Mr.
Aditya Sharma, Advs. for D-1.
Ms. Vasundhra Singh, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **11.01.2018**

1. In this suit for partition, of property No.J-1930 ad-measuring 222 sq. yds., Chittaranjan Park, New Delhi, vide order dated 12th February, 2015, a preliminary decree for partition was passed declaring the plaintiff Dr. Monica Sood, the defendant No.1 Kunal Bose (who died prior thereto and was substituted by his mother Shyla Shankar) and the defendant No.2 Smt. Banashri Bose Harrison to be having 1/3rd share therein.
2. The counsel for the plaintiff, on enquiry, informs that the property was owned by the father of the plaintiff Dr. Monica Sood and the defendant No.2 Smt. Banashri Bose Harrison and the defendant No.1 Kunal Bose was the son of the brother of the plaintiff Dr. Monica Sood and the defendant No.2 Smt. Banashri Bose Harrison.
3. However, before a final decree for partition could be passed, one Anita Bose Negi filed an application for impleadment and which was allowed.

4. The said Anita Bose Negi claims to be the wife of Kunal Bose and which claim is disputed by Shyla Shankar i.e. the mother of Kunal Bose. However, the said dispute is stated to be the subject matter of a suit before the Civil Judge, Saket Courts, New Delhi.
5. The counsel for the plaintiff, on enquiry, states that the said Anita Bose Negi claims only 1/3rd share of Kunal Bose and otherwise has not challenged the preliminary decree for partition aforesaid.
6. The counsel for the plaintiff, the counsel for defendant No.1 Kunal Bose/Shyla Shankar and the counsel for the defendant No.2 Smt. Banashri Bose Harrison state that a final decree for partition of the property which is indivisible by metes and bounds be passed, of sale thereof with the sale proceeds being distributed in terms of the shares declared in the preliminary decree for partition.
7. On enquiry, it is informed that the property comprises of one and a half floors and is in custody of the Receiver appointed in this suit.
8. None appears for Anita Bose Negi.
9. The counsels state that the said Anita Bose Negi has for the last few dates been seeking adjournments.
10. I have enquired from the appearing counsels, the fate of 1/3rd share of the deceased defendant No.1 Kunal Bose in the sale proceeds, if a final decree for partition by sale of the property were to be passed.
11. The counsels state that the distribution of the sale proceeds of the share of the deceased defendant No.1 Kunal Bose be made subject to the outcome of the pending *inter se* proceedings between Shyla Shankar and Anita Bose Negi or of any other proceeding between them which may be

filed in this regard.

12. The counsel for the defendant No.1 Kunal Bose/Shyla Shankar also states that Anita Bose Negi has not set up any Will of Kunal Bose and even if her plea of being the wife of Kunal Bose were to be accepted, Shyla Shankar would still have half share in $\frac{1}{3}^{\text{rd}}$ share of Kunal Bose. He thus states that 50% out of $\frac{1}{3}^{\text{rd}}$ share of defendant No.1 Kunal Bose in the sale proceeds be ordered to be released to Shyla Shankar.

13. It is not deemed appropriate to pass order for release of any amount of sale proceeds in favour of Shyla Shankar, without hearing Anita Bose Negi. It will be open to Shyla Shankar to claim such direction either in the pending proceeding with Anita Bose Negi or in execution of final decree for partition.

14. Accordingly, a final decree for partition of property No.J-1930, measuring 222 sq. yds., Chittaranjan Park, New Delhi is passed, of sale of the property and distribution of sale proceeds in terms of the preliminary decree dated 12th February, 2015 for partition of the said property with the $\frac{1}{3}^{\text{rd}}$ share of the defendant No.1 Kunal Bose being deposited in this Court and being kept in a maximum interest bearing account.

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

16. The Receiver is directed to allow inspection of the property to the prospective purchaser/s as and when required or ordered in execution, if any of the final decree for partition.

17. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 11, 2018/bs..
CS(OS) 2196/2012