$~22

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

\+ CS(OS) 186/2018

SHRI O.P. MATHUR & ORS

..... Plaintiffs

Through : Mr.Amit Chaddha, Senior Advocate with Mr.Ashish Kothari, Ms. Pusshp Gupta, Mr.H.S. Kohli, Advocates. Mr.Dinesh Garg, Ms.Rachna Agrawal, Advocates.

versus

SHRI RAJAT MATHUR & ANR

..... Defendants

Through : Ms.Vandana Bhatnagar, Advocate.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 17.08.2018

IA No.10961/2018

The parties have filed the joint application under Order XXIII Rule 3 and 3A CPC for passing of the decree in terms of the settlement so arrived at. It is submitted by both the counsels the matter is settled between the parties in terms of para 5(i) to 5(xv) of this application as below:-

> *"(i) the parties to the suit do hereby agree, accept and confirm that the suit property i.e. property No.B-l/8, Vasant Vihar, New Delhi-l 10057, measuring 590 sq.yds. was owned by Shri Ayodhya Prasad Mathur by virtue of PerPetual Sub-/Lease Deed dated 17.05.1969 and that he was the absolute owner thereof.*
>
> *(ii) the parties also do hereby agree, accept and confirm that Shri Ayodhya Prasad Mathur had unfortunately died in December 1995 as a widower and issueless.*
>
> *(iii) all the parties to the present suit, without going into the*

controversy as to whether WILL dated 21.04.1989 or the WILL dated 04.10.1995 was the last WILL and TESTAMENT of Late Shri Ayodhya Prasad 'Mathur and without going into the controversy as to whether Shri Ayodhya Prasad Mathur had executed either of the WILL or not, do hereby agree, accept arid confirm that the said property had devolved upon the two sons of Shri M. P. Mathur (the elder brother of Shri Ayodhya Prasad Mathur) i.e. Shri O. P Mathur and Shri Ashok Mathur' and each one of them inherited the said property for himself as well as for and on behalf of his family members in equal share.

(iv) that the parties also do hereby agree, accept and confirm that Shri O. P Mathur, the plaintiff No.1 got 50% share in the'said property for himself as well as for and on behalf of his two sons i.e. plaintiff Nos. 2 and 3 and similarly, the 50% share of Shri Ashok Mathur (who died intestate on 11.04.2010) was inherited by his widow and the son i.e. the defendants herein.

(v) that the parties also do hereby agree, accept and confirm that the said property was got converted from leasehold to freehold and the Conveyance Deed dated 10.09.2002 was obtained and got registered in the name of Shri Ashok Mathur, Shri O. P. Mathur and Shri Rajat Mathur only for the sake of convenience.

(vi) that the parties do hereby agree, accept and confirm that by virtue of Oral Family Settlement reached between the parties on 26.09:2016, the said property is owned by the parties as per under:-
SHRI O.P. MATHUR (Plaintiff No.l) and SHRI SUDHIR MATHUR (Plaintiff No.2):
Entire Second Floor, 75% of the Terrace above the Third Floor, 25% of the Basement and right to use the Stilt area in common (having entitlement to 25% of Stilt area) and 25% of undivided and impartible, rights in the land underneath
SHRI O.P. MATHUR (Plaintiff No.l) and SHRI SANJAY MATHUR (Plaintiff No.3):
Entire First Floor, 25% of the Terrace above the Third Floor, 25% of the Basement and right to use the Stilt area in common (having entitlement to 25% of Stilt area) and 25% of undivided and impartible rights in the land underneath.
SHRI RAJAT MATHUR (Defendant No.I) & SMT. KITU MATHUR (Defendant No.2):
Entire Ground Floor, Entire Third Floor, 50% of the Basement and right to use the Stilt area in common (having entitlement to 50% of Stilt area) and 50% of undivided and impartible rights in the land underneath

(vii) that the defendants do hereby specifically agree and accept that they are entitled to only 50% of the basement (attached to Ground Floor and Third Floor) as earmarked in the site plan annexed being part of ANNEXURE A and rest of the 50% basement (attachment to First Floor and Section Floor) is owned by the plaintiffs.

(viii) that each of the party does hereby specifically release / relinquish all his / her right, title and interest in respect of the portion fell to the share of the other parties under the aforesaid Family

Settlement in favour of such respective party and undertakes to not to claim any right, title or interest of any nature whatsoever therein. Each of the party will be absolute owner of his / her respective share and shall be entitled to use and enjoy the same as absolute owner thereof including to sell, transfer, assign, let out or to deal with the same in any manner at his / her discretion to which' the other parties shall neither have any right to object nor shall object.

(ix) that each party shall be entitled to use and enjoy all common passages, stair case and other common areas without any obstruction or interference from other party.

The Site Plans for Basement, Stilt, Ground Floor, First Floor, Second Floor; Third Floor & Terrace are collectively annexed herewith in ANNEXURE 'A'.

(x) that each party shall be liable to pay his / her respective charges towards House Tax or any other statutory levy of his / her portion.

(xi) that none of the party shall interfere in occupation and possession of the portion of the other party, however, the common portions' / areas shall be maintained by all the parties by contributing the proportionate amount of expenses.

(xii) that each party shall be entitled to apply for and obtain the mutation in his / her name in respect of his / her respective portions.

(xiii) that the aforesaid ownership, possession and 'right to use and enjoyment as absolute owner by the respective party shall be deemed to be w.e.f. the date of Oral Family Settlement dated 26.09.2016.

(xiv) that the parties hereto as well as their legal heirs and any other person claiming under them shall be bound by the terms contained herein and shall abide by the same.

(xv) that the parties shall bear their own costs."

It is submitted by the learned counsels for the parties that the settlement so arrived at has been entered into between the parties without any coercion or influence from any corner and of their own free will. The settlement is lawful and both the parties are bound by such settlement and there is no legal impediment in decreeing the suit.

In view of above the IA stands allowed and suit of the plaintiff is hereby decreed in terms of para 5(i) to 5(xv) above which shall

form part of the decree along with the site plan annexed. Pending application, if any, also stands disposed of. The date earlier fixed stands cancelled.

Since the matter has been settled amicably between the parties the plaintiff shall be entitled to refund of the Court fee as per the provisions of the Court Fee Act.

YOGESH KHANNA, J

AUGUST 17, 2018
DU