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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 341/2018 & CM Nos. 16100-01/2018**

ASHOK KUMAR GUPTA

..... Appellant

Through: Mr. P.D.Gupta, Sr. Advocate with
Mr. Atul Gupta, Advocate.

versus

PREMWATI(DECEASED) THR LRS

..... Respondents

Through: Mr. Rajeshwar Kumar Gupta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **16.05.2018**

1. This Regular First Appeal filed under Section 96 CPC impugns the judgment of the trial court dated 3.2.2018 whereby the trial court has ordered that the suit property will be sold inasmuch as physical partition of the suit property is not possible. Trial court has also held that decree sheet will be stamped as per Article 45 of Schedule 1 of the Indian Stamp Act.

2. A Full Bench of this Court, of which I was one of the member, has recently in O. Ref. 2/2018 in CS(OS) 1098/2005 titled as ***Indu Singh & Anr. Vs. Prem Chaudhary and Ors.*** decided on 11.5.2018 held that once physical partition of the suit property is not possible and the suit property has to be sold in terms of Section 8 of the Partition Act, then the proceedings

in the suit end at this stage. Any steps for sale of the suit property have to be in execution proceedings after a decree is drawn up on a non-judicial stamp paper in terms of the Article 45 of Schedule 1 of the Indian Stamp Act.

3. Since the impugned judgment only holds that the suit property is not capable for partition by metes and bounds and the suit property will be sold, that too subject to a right of pre-emption of any of the co-owner who gives the best price for purchase of the property, in my opinion, appellant can have no grievance, but at the request of the appellant it is clarified that since the appeal is withdrawn and the impugned judgment passed by the trial court is being confirmed, that when in execution proceedings there will be sale of the suit property, the executing court will follow the procedure provided under Section 7 of the Partition Act. As a matter of abundant caution it is observed that procedure of sale in terms of Section 7 of the Partition Act is as per appropriate provisions of CPC and which will include a proclamation of sale, minimum price being fixed for sale of the suit property and all other aspects which would be relevant to bring about the best procedure in an auction sale and the best price on sale of the suit property.

4. The appeal is accordingly disposed of as not pressed but with the aforesaid observations.

VALMIKI J. MEHTA, J

MAY 16, 2018

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