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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2813/2012 & IA No.17120/2012 (u/O XXXIX R-1&2 CPC).
ARUNENDU DATTA MAJUMDAR & ORS Plaintiffs
Through: Ms. Sumati Anand, Adv.
versus
SHANKARENDU DATTA MAJUMDAR Defendant
Through: Defendant in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.02.2018**

1. This order is in continuation of the earlier order dated 13th February, 2018.
2. Today, one gentleman who claims himself to be Mr. S. Datta Majumdar i.e. defendant appears in person and states that he could not appear on 13th February, 2018 owing to illness and has in the past been appearing personally in the suit.
3. The counsel for the three plaintiffs identifies the person present as defendant and the said person has also on asking handed over his Adhaar Card to the Court Master and the Court Master confirms that the person present is the person whose Adhaar Card is shown. A copy of the Adhaar Card is taken on record and the original Adhaar Card is returned to the defendant.
4. According to the counsel for the three plaintiffs, the property being house no.95-B/2, Street No.4, Krishna Nagar, Safdarjung Enclave, New Delhi is indivisible by metes and bounds into four parts amongst the three plaintiffs and the defendant, each of whom under the preliminary decree for partition dated 18th May, 2017 has been declared to have 1/4th share in the property. On enquiry, it is informed that the property is constructed over

land *ad measuring* 431.5 sq. yds. and comprises of a single storey only. The defendant however states that the Court Commissioner appointed pursuant to the preliminary decree of partition has reported that the property actually measures only 410 sq. yds.

5. The defendant, on enquiry states that the property is divisible by metes and bounds and has been reported so by the Court Commissioner as well.

6. The Court Commissioner has reported that the property can be divided into four plots of 107.87 sq. yds. each either longitudinally or latitudinally.

7. The layout plan of the colony and the Municipal Bye-laws do not permit such sub division of the plot as has been reported by the Court Commissioner. The Court Commissioners, prior to submitting such reports, are required to go into workability and practicality of the division by metes and bounds suggested and are not to hypothetically and in vacuum make proposal which is not workable in law, leaving the parties in quandary forever.

8. The defendant, on enquiry states that he does not agree with the report of the Court Commissioner but has filed an application vide Diary No.59033 on 17th February, 2018 making alternate proposals for division of the property by metes and bounds.

9. No such application has been listed in the Court.

10. The defendant has been asked to hand over a copy of the application stated to have been filed and has handed over the same in the Court and which is taken on record.

11. I have gone through the said application and do not find the same to be making any proposal for division of the property by metes and bounds.
12. I am otherwise satisfied that the property cannot be divided amongst the three plaintiffs and the defendant by metes and bounds.
13. Accordingly, a final decree of partition of house no.95-B/2, Street No.4, Krishna Nagar, Safdarjung Enclave, New Delhi is passed, of sale thereof and of distribution of sale proceeds amongst the parties as per their respective shares declared in the preliminary decree for partition dated 18th May, 2017.
14. I have asked the counsel for the plaintiffs, whether the plaintiffs desire a right of *inter se* bidding amongst the parties.
15. The counsel for the plaintiffs replies in the negative.
16. The defendant, in his application copy of which has been taken on record today, has already stated that he is living in a state of penury.
17. The parties are left to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 19, 2018

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