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

+ CS(OS) 1848/2009

VIKRAM KAUSHIK & ANR

.... Plaintiffs

Through: Mr. Arjun Mitra and Ms. Jaskaran  
Kaur, Advs.

Versus

VIVEK KAUSHIK

..... Defendant

Through: Ms. Kritika Khanna, Adv. for Ms.  
Ritika Jhurani and Mr. Dinesh  
Sharma, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **30.01.2018**

1. In this suit for partition of following three immoveable properties:
  - (I) Property No.L-19, Lajpat Nagar-III, New Delhi-110024;
  - (II) Flat No.1402, Marathon Galaxy-1, L.B.S. Marg, Mulund, Mumbai, Maharashtra; and,
  - (III) Agricultural Land in two pieces comprising about 10 acres each in Village and Post Office Shedawan, District Bulandshahar, Uttar Pradesh,

a preliminary decree for partition was passed on 10<sup>th</sup> February, 2015 declaring the two plaintiffs namely Vikram Kaushik and Jyotsna Kaushik and the sole defendant namely Vivek Kaushik to be having 1/3<sup>rd</sup> share in each of the three properties and a Commissioner appointed to explore the mode of partition.

2. The Commissioner has submitted a report dated 28<sup>th</sup> July, 2017 stating (a) that Flat No.1402, Marathon Galaxy-1, L.B.S. Marg, Mulund, Mumbai cannot be divided by metes and bounds; (b) that the agricultural land at Village and Post Office Shedawan, District Bulandshahar, Uttar Pradesh can be divided by metes and bounds; and, (c) that Property No.L-19, Lajpat Nagar-III, New Delhi cannot be divided by metes and bounds.
3. The two plaintiffs have filed objections dated 25<sup>th</sup> January, 2018 to the report of the Commissioner.
4. Ms. Kritika Khanna, Advocate appearing for the defendant states that she has been engaged by the defendant yesterday only and does not even have the file and seeks adjournment.
5. On enquiry, the counsel for the plaintiffs states (i) that the Mumbai Flat is being used as residence by the plaintiff No.1; (ii) that the interest of the two plaintiffs is the same; (iii) that the defendant is in occupation of the Lajpat Nagar property; though earlier there was one tenant in the said property but he is learnt to have left.
6. Ms. Kritika Khanna, Advocate states that her seniors Mr. Dinesh Sharma and Ms. Ritika Jhurani, Advocates are not available and she is not knowing anything at all. On enquiry, it is stated that the defendant is also not present.
7. A litigant, by choosing not to appear and by not ensuring presence of Advocate duly instructed, is not entitled to so delay the proceedings.
8. I have enquired from the counsel for the plaintiffs, whether there is any law akin to Delhi Land Reforms Act, 1954 barring partition of agricultural land by a decree of the Civil Court, applicable to the agricultural

land with respect to which preliminary decree for partition has been passed.

9. The counsel for the plaintiffs states that he has not looked up and studied the matter in this light.

10. Unfortunately, the report of the Commissioner appointed, though suggesting division by metes and bounds of the land, also does not address the said issue.

11. It is not understandable, as to how the plaintiffs filed the suit for partition of agricultural land, without addressing this issue.

12. I have further enquired from the counsel for the plaintiffs, as to what is his proposal with respect to the Mumbai Flat and the Lajpat Nagar property.

13. The counsel for the plaintiff states that Lajpat Nagar property comprises of the basement, ground, first and second floors and the defendant can keep the basement and the ground floor and the first and second floors can be given to the plaintiffs. With respect to the Mumbai Flat however the counsel states that the same is incapable of division by metes and bounds and the plaintiffs would like to retain the same and the value thereof can be adjusted with respect to the first and second floors of Lajpat Nagar property. It is also stated that it can be adjusted in whatever portion of Lajpat Nagar property sold or represents the value thereof.

14. On enquiry, whether any of the two plaintiffs desire to reside in Lajpat Nagar property, the counsel for the plaintiffs states that he is unable to say so. However, again though the counsel has no instruction but has not called the plaintiffs either.

15. The counsel for the plaintiff also draws attention to the judgment dated 10<sup>th</sup> February, 2015 and states that a decree for accounts was also passed in favour of the plaintiffs and against the defendant.

16. In this view of the matter, a final decree for partition of the properties aforesaid is passed in the following terms:

(A) Of sale of Property No.L-19, Lajpat Nagar-III, New Delhi and Flat No.1402, Marathon Galaxy-1, L.B.S. Marg, Mulund, Mumbai, Maharashtra and distribution of sale proceeds between the parties as per the shares declared in the preliminary decree for partition;

(B) However, the parties shall be entitled to mutually adjust the value of the Mumbai Flat with the proportionate value of the Lajpat Nagar property and with the Mumbai Flat falling to the exclusive share of the plaintiff/s;

(C) The parties shall be entitled to make inter se bids with respect to both of aforesaid properties, with the party whose bid is the highest, purchasing the share/s of other party/ies;

(D) If the parties are unable to mutually do so, either party shall be entitled to apply for execution of this final decree for partition and in which execution also, the parties will have such an option;

(E) The parties shall be at liberty to approach the Revenue Authorities of the locality where the agricultural land is located, for partition by metes and bounds of the agricultural land, if permissible in law and if the same is not permissible in law, a decree for partition of the agricultural land as well, by sale thereof and distribution of sale proceeds as per shares declared in the preliminary decree for partition,

is passed;

(F) The parties, in that case shall similarly be entitled to make inter se bids with respect to the said agricultural land;

(G) In the event of the parties making inter se bids with respect to all or any of the properties, the selling party/parties shall deliver vacant, peaceful, physical possession of the portion of the property in his/her/their possession to the purchasing party against receipt of the sale consideration of his/her/their share/s and execute the document/s of transfer of the property;

(H) As far as the decree for accounts is concerned, liberty is granted to parties to, in execution, seek appointment of Commissioner, to go into accounts and to submit report.

17. The counsel for the plaintiffs seeks costs of the suit.

18. Having perused the issues framed in the suit, I am of the view that no case for award of any costs of the suit, is made out.

Decree sheet be drawn up.

**RAJIV SAHAI ENDLAW, J.**

**JANUARY 30, 2018**

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