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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 770/2016**

VIJAY ANAND @ TITU ANAND

..... Appellant

Through: Mr. Jayant Mehta, Ms. Deboshree
Mukherjee, Mr. Romil Pathak and
Mr. R.Anand Padmanabhan,
Advocates (9999770661)

versus

DR BALDEV RAJ ANAND & ORS

..... Respondents

Through: Mr. Sandeep Thukral, Adv. for 2(A-
C),3 and 4 (9971265222)
Mr. Pravin Sharma, Ms. Kanika
Sharma and Mr. Prannav Sharma,
Advocates for R-6(a to c)
(9013007610)
Mr. Jagmohan Sabharwal, Sr. Adv.
with Ms. Seema Singh, Adv. for R-7
(9350334114)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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31.10.2018

1. After arguments, this appeal is disposed of by observing that the impugned judgment and final decree dated 7.1.2016 will stand as modified by directing that the suit plot will not be auctioned whereby parties were to be given their shares in terms of the price received in the sale proceedings, but that with respect to the suit property a collaboration or builders agreement will be entered into with a builder/collaborator so that

such builder/collaborator can take his share of the newly constructed property for incurring the cost of constructing a new property by utilising complete FAR, and that if any of the parties wants that he/she should not get constructed flats/flats then such shares can also be purchased by the builder at the outset from such person who wants to sell the flat in the newly constructed property which falls to the share of such person. Reference to flats means reference to constructed area falling to the share of a person as per shares decided by the preliminary decree.

2. In sum and substance, it is agreed, and it is accordingly observed that, qua the suit property there will be a builder's/collaborator's agreement by bringing in a builder/collaborator, which can even be one of the parties to this litigation provided he/she satisfies the financial criteria as required for reconstruction of the building and as otherwise stated in the present order, who will re-construct the property in accordance with rules and law upto maximum permissible FAR, and so far as the newly constructed property is concerned, after the share of the builder is taken by him towards the cost of the construction of the property, each party who gets his share in terms of the preliminary decree passed on 22.11.2005 and as confirmed by the learned Single Judge of this Court by his Judgment dated

26.4.2016 in RFA Nos. 99/2006, 120/2006 and 235/2006 (and as modified vide order dated 31.5.2016) which has become final with respect to the determination of shares, each party will get his/her share of flat/flats/constructed area in the newly constructed property plus monies or only monies or partly the flats and partly monies, in accordance with the terms agreed in the collaboration agreement to be entered into by the parties with the collaborator/builder.

3. Some of the counsels however rightly state that it is possible that within a reasonable period of time none of the parties may be able to find a builder/collaborator, and therefore, in such an eventuality an alternative position be also provided in this final judgment and decree so that in case the collaboration/builder agreement does not go through, then the suit property is/will be sold by auction whereby the parties effectively gets in money terms what he or she is entitled to in terms of the shares delineated by the preliminary decree and the final decree. This is acceptable to all the counsels, and therefore, it is agreed and ordered that a period of three years from today is given to enter into a builder's/collaboration agreement in terms of the final decree passed today and in case in three years no builder/collaborator is found who is ready to reconstruct the

property and give to the parties their shares in terms of flats or monies or flats-cum-monies then at that stage parties in the execution proceedings of the final decree can seek for directions for sale of the property so as to get the best possible price of the property.

4. It is also clarified that all the parties will make an endeavour to ensure that a best possible agreement which effectively gives all the necessary rights to each of the parties in terms of their shares is entered into with the collaborator/builder, and the collaborator/builder will be a collaborator/builder of repute in terms of the balance sheet and profit and loss account of the builder for the last few years showing the requisite financial capacity of the builder/collaborator.

5. In case, there is any dispute between the parties as to which builder/collaborator should be the person/entity with whom the collaboration agreement should be entered into, then in such a case the executing court will be entitled to take a final decision on this matter.

6. Counsel for the appellant also states that court fees as required to be filed by the appellant in this appeal, and as has been directed on 28.11.2016, will be made good within a period of three months from today.

7. I would also like to clarify that execution proceedings which

have been filed in the trial court will continue only after a final decree on appropriate stamp papers is drawn up in accordance with law and as held in the judgment in the case of ***Indu Singh & Anr. Vs. Prem Chaudhary & Ors*** **2018 (170) DRJ** 1 being Original Reference 2/2018 in CS(OS) 1098/2005 decided on 11.5.2018.

8. The appeal is accordingly disposed of in terms of the present consent order.

VALMIKI J. MEHTA, J

OCTOBER 31, 2018/ib