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

+ **CS(OS) 2042/2009**

DR. MURAD A. RAHMAN

..... Plaintiff

Through: **Mr. N.K. Kantawala** adn **Ms. Akanksha Jain, Advs.**

Versus

AYESHA SAWHNY NEE RAHMAN & ANR

..... Defendants

Through: **Mr. Ajay Kapur, Sr. Adv. with Mr. Rohan Sharwer, Mr. Dheeraj P. Dev and Ms. Riya, Advs.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

30.01.2018

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1. In this suit for declaration, partition of immoveable property bearing No.A-9/25, Vasant Vihar, New Delhi and for permanent injunction, a preliminary decree for partition was passed on 2nd November, 2011 declaring that the plaintiff and the defendant No.1 have 50% share each in property bearing No.A-9/25, Vasant Vihar, New Delhi and all other moveable properties as detailed in para 3(y)(ii) to (xiii) of the plaint. The counsels on that date stated that it was not necessary to appoint the Commissioner, as the parties had agreed to sell the immoveable property and to divide the moveable properties amongst themselves.

2. Since then, the suit is being adjourned and on 5th August, 2015, a Commissioner also appointed to sell the property.

3. The counsel for the plaintiff and the senior counsel for both the defendants (the defendants No.2 to 12 were deleted vide order dated 5th August, 2015 and the senior counsel for the defendant No.1 states that the defendant No.13 Karan R. Sawhny is the husband of the defendant No.1 and he is representing the defendant No.13 as well) as per the amended memorandum of parties dated 20th January, 2016 have mentioned the matter and both state that the property has not been sold as yet and the matter be adjourned by three months.

4. On enquiry, it is further stated that all the moveable properties have already been partitioned between the plaintiff and the defendant No.1 except two mutual funds, payment whereunder has not been released owing to the initial interim order in this suit.

5. On enquiry, it is further stated that with the preliminary decree for partition, the need for declaration and injunction sought in the suit, does not survive.

6. Once the immoveable property with respect to which a preliminary decree for partition has already been passed has been agreed to be sold, there is no need to keep this suit pending and a final decree for partition of the property can be passed, of sale of the property and of distribution of sale proceeds between the plaintiff and the defendant No.1 as per the shares declared in the preliminary decree for partition.

7. As far as the sale is concerned, if the plaintiff and the defendant No.1 themselves or the Commissioner already appointed for this purpose are unable to sell the property, either of them shall be entitled to apply for execution of the final decree for partition of the said property.

8. Accordingly, a final decree for partition of property No.A-9/25, Vasant Vihar, New Delhi is passed, of sale of the property and of distribution of the sale proceeds between the plaintiff and the defendant No.1 as per their share declared in the preliminary decree for partition dated 2nd November, 2011.
9. The parties are left to bear their own costs.
10. Decree sheet be drawn up.
11. If either party causes impediment in sale, the other party shall be entitled to apply for execution.
12. The parties are at liberty to continue availing the services of the Commissioner already appointed for affecting the sale.
13. Needless to state that with the disposal of the suit, the impediment under the earlier interim order dated 30th October, 2009 for encashment of the following mutual funds, which according to the parties are in the names noted against them, stands vacated:

Sr. No.	Mutual Fund	Name
1.	DSP Blackrock Mutual Fund	(i) Dr. Murad A. Rahman (ii) Ayesha Rahman
2.	SBI Mutual Fund	(i) Ayesha Rahman (ii) Late M.A. Rahman

RAJIV SAHAI ENDLAW, J.

JANUARY 30, 2018

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