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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 342/2016 & IA No.8197/2016 (u/O XXXIX R-1&2 CPC)
RAM CHOPRA Plaintiff

Through: Mr. Rishi Manchanda, Adv.

Versus

SEEMA CHOPRA & ANR Defendants

Through: Mr. Rajiv Kumar Chaudhary & Ms.
Anjali Gupta, Advs. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.12.2018**

1. This suit for partition is ripe for framing of issues.
2. Neither the counsel for the plaintiff nor the counsel for the defendant no.1 has proposed any issues.
3. The defendant no.2 is *ex parte*.
4. The pleadings have been perused.
5. The plaintiff has instituted this suit claiming that, (i) the plaintiff on 22nd February, 1971, vide registered sale deed purchased 25% undivided share in property No.J-6/111, Rajouri Garden, New Delhi; (ii) thereafter the plaintiff, on 27th April, 1989 purchased another 50% undivided share in the said property in his own name and the remaining 25% share in the name of his wife, the defendant no.1; (iii) thus the plaintiff became the owner of 75% undivided share in the property and the defendant no.1 became the owner of 25% undivided share in the property; (iv) the property is constructed over land ad-measuring 160 sq. yds. and comprises of a ground, first and partly built second floor; and, (v) on 16th September, 2009, the plaintiff executed

registered gift deed of 20% undivided share out of his 75% share in the property, in the name of defendant no.2 Sachin Chopra, being the son of the plaintiff and the defendant no.1. The plaintiff seeks partition.

6. The defendant no.2 is *ex parte* as aforesaid.

7. The defendant no.1 has contested the suit but has not controverted the sale deeds and gift deed aforesaid. The plea of the defendant no.1 is, that the sale consideration of the entire property was paid partly by the father of the defendant no.1 and partly out of the stridhan of the defendant no.1, and that the plaintiff had deserted the defendant no.1 and his children and has resurfaced after about 20 years.

8. I have today also asked the counsel for the defendant no.1, whether there is any dispute as to the plaintiff having 55% undivided share in the property, the defendant no.1 having 25% undivided share in the property and the defendant no.2 having 20% undivided share in the property, as per the registered sale deeds and gift deed aforesaid.

9. The counsel for the defendant no.1 has fairly stated that as per the registered documents, it is so. His contention however is that since the plaintiff had disappeared from his house and remained missing for about 20 years, the plaintiff cannot seek any partition.

10. Merely on account of desertion, even if any, of spouse, right and title of the plaintiff in the property would not stand extinguished.

11. The written statement of the defendant no.1 is thus not found to raise any triable issue, for the suit to be put to trial.

12. The defendant no.2 having chosen not to contest the suit and the share of the defendant no.2 in the property being borne out from the registered documents on record, the need to relegate the plaintiff to *ex parte* evidence against the defendant no.2 also does not arise.

13. There is thus no need to frame any issue or to relegate the parties to evidence and there is no impediment to the passing of a preliminary decree for partition.

14. A preliminary decree for partition of property bearing No.J-6/111, Rajouri Garden, New Delhi is accordingly passed, declaring the plaintiff, defendant no.1 and defendant no.2 to be having 55%, 25% and 20% undivided share respectively therein.

15. Decree sheet be drawn up.

16. Considering that the property is constructed over land ad-measuring 160 sq. yds. and is described as comprising of shops on the ground floor, first floor and partly built second floor, the possibility of the property being capable of division by metes and bounds does not exist.

17. The counsel for the plaintiff and the counsel for the defendant no.1 also agree to the same.

18. There is thus no option but to also pass a final decree for partition of sale of the property.

19. A final decree for partition of property No. J-6/111, Rajouri Garden, New Delhi is accordingly passed, of sale thereof and distribution of sale proceeds amongst the parties as per their shares declared in the preliminary decree for partition.

20. It is however clarified that before the property being put to sale to outsiders, the parties shall be entitled to make *inter se* bids, with whosoever's bid is the highest, being entitled to purchase the share of the others.

21. Whosoever party/parties is in occupation and possession of whichever portion of the property shall, on such sale, hand over vacant peaceful physical possession of the share in his / her possession to the purchaser and if fails to do so, shall be liable to be dispossessed therefrom as if in pursuance of a decree for possession.

22. Parties are left to bear their own costs.

23. Subject to the requisite stamp duty being paid, final decree for partition be drawn up.

24. On request of the parties, the parties are referred to mediation cell of this Court.

25. The counsels state that they will involve the other children of the plaintiff and the defendant no.1 also in mediation.

26. The parties to appear before the Mediation Cell of this Court on 22nd January, 2019 at 1430 hours.

27. It is however clarified that as far as this suit is concerned, the same is disposed of.

RAJIV SAHAI ENDLAW, J.

DECEMBER 07, 2018

‘gsr’..