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

+ CS(OS) 3023/2011

NIRMAL MEHTA & ORS Plaintiffs

Through: Ms. Radhika Arora, Adv.

Versus

BHISHAM DEV MEHTA & ORS Defendants

Through: Mohd. Nadeem Ansari, Adv. for
D-1&2.

AND

CS(OS) 3028/2011 & IA No.19428/2011 (u/O XXXIX R-1&2 CPC)

NIRMAL MEHTA & ORS Plaintiffs

Through: Ms. Radhika Arora, Adv.

Versus

KUSUM MEHTA & ORS Defendants

Through: Mohd. Nadeem Ansari, Adv. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.02.2018

1. CS(OS) No.3023/2011 was filed by (a) Mrs. Nirmal Mehta, (b) Yogesh Mehta, (c) Karan Mehta, (d) Gopesh Mehta and (e) Latika Chopra against (i) Bhisham Dev Mehta, (ii) Love Dev Mehta, (iii) Geeta Mehta, (iv) Hemlata Mehta and (v) Deepti Dhingra, *inter alia* for partition of basement, ground floor, second floor and terrace of property No.E-541, Greater Kailash-II, New Delhi.

2. CS(OS) No.3028/2011 is filed by (a) Mrs. Nirmal Mehta, (b) Yogesh Mehta, (c) Karan Mehta, (d) Gopesh Mehta and (e) Latika Chopra against (i) Geeta Mehta, (ii) Hemlata Mehta, (iii) Deepti Dhingra and (iv) Varun Mehta

inter alia for partition of ground floor, first floor, second floor and terrace of property bearing No.G-35, Lajpat Nagar-III, New Delhi.

3. As would be evident from above, the rest of the parties in the two suits are the same, save for defendant Bhisham Dev Mehta in CS(OS) No.3023/2011 and Varun Mehta in CS(OS) No.3028/2011.

4. Upon Ms. Radhika Arora, Advocate for the plaintiffs in both the suits being asked in this regard, she states that she will have to check up and she is today appearing without checking.

5. On 11th August, 2015, a preliminary decree for partition on consent was passed in CS(OS) No.3023/2011, holding the plaintiffs i.e. Mrs. Nirmal Mehta, Yogesh Mehta, Karan Mehta, Gopesh Mehta and Latika Chopra together to be having 1/4th undivided share with each of the five plaintiffs being entitled to 1/5th undivided share out of the said 1/4th undivided share, the defendant No.1 namely Bhisham Dev Mehta and the defendant No.2 namely Love Dev Mehta to be having 1/4th undivided share each and the defendants No.3 to 5 namely Geeta Mehta, Hemlata Mehta and Deepti Dhingra together to be having the remaining 1/4th undivided share with each of the defendants No.3 to 5 having 1/3rd undivided share out of the said 1/4th undivided share in property subject matter of the said suit.

6. On 21st January, 2016, a preliminary decree for partition on consent was passed in CS(OS) No.3028/2011 delineating the shares of the parties therein as under:

S.No.	PARTIES	SHARES
1.	Mrs. Nirmal Mehta w/o Late Sh. Harish Chander Mehta PLAINTIFF NO.1	3/45 th
2.	Mr. Yogesh Mehta S/o Late Sh. Harish Chander Mehta PLAINTIFF NO.2	3/45 th
3.	Sh. Karan Mehta S/o Late Sh. Harish Chander Mehta PLAINTIFF NO.3	3/45 th
4.	Sh. Gopesh Mehta S/o Late Sh. Harish Chander Mehta PLAINTIFF NO.4	3/45 th
5.	Mrs. Latika Chopra D/o Late Sh. Harish Chander Mehta PLAINTIFF NO.5	3/45 th
6.	Ms. Geeta Mehta D/o Late Sh. Chatarpal Mehta DEFENDANT NO.2	5/45 th
7.	Ms. Hemlata Mehta D/o Late Sh. Chatarpal Mehta DEFENDANT NO.3	5/45 th
8.	Ms. Deepti Mehta D/o Late Sh. Chatarpal Mehta DEFENDANT NO.4	5/45 th
9.	Mr. Varun Dev Mehta S/o Mr. Bhisham Dev Mehta DEFENDANT NO.5	15/45 th

7. Notwithstanding the preliminary decrees for partition having been passed as aforesaid, the suits continue to languish.

8. Ms. Radhika Arora, Advocate states that properties subject matter of both the suits are to be sold and the parties had earlier entered into an agreement to sell with respect to the property subject matter of CS(OS) No.3023/2011 but the said agreement to sell has not fructified.

9. Though Mohd. Nadeem Ansari, Advocate also appearing states that he is appearing for defendants No.1&2 in both the suits but on being informed that the defendants No.1&2 in these two suits are different, has no answer. No other counsel appears. Mohd. Nadeem Ansari, Advocate also does not know, whether the properties have to be sold and states that he is not the main counsel and Ms. Reena Kumar, Advocate is the main counsel and who has chosen not to appear.

10. The suits cannot be kept pending in this fashion. Once it is clear that the properties have to be sold and the sale proceeds divided between the parties as per their shares declared under the preliminary decrees for partition, there is no impediment to the passing of the final decree of partition in these suits.

11. Accordingly, a final decree for partition of the property subject matter of each of the suits 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 in each of the suits, *leaving the parties to bear their own costs.*

12. Decree sheets be drawn up.

13. All pending applications also stand disposed of.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 06, 2018

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