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

+ CS(OS) 3019/2011 & IAs No.20429/2015 (of D-1 u/S 151 CPC),
21564/2015 (of D-3 u/S 151 CPC), 7743/2016 (u/S 151 CPC),
951/2017, 6359/2017 & 6360/2017 (all of D-3 u/S 151 CPC)

AJAY KUMAR WADHWA Plaintiff

Through: Plaintiff-in-person.

Versus

AMARNATH WADHWA & ORS Defendants

Through: Mr. Anshoo Saxena, Adv. for D-2.

D-3 in person.

Ms. Sonia A Menon, Adv. for D-4.

Mr. Shalabh Gupta, Adv. for Mrs.

Anju Narang and Mrs. Veena Madan,

with Mrs. Anju Narang and Mrs.

Veena Madan in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.02.2018**

1. In this suit for partition of property No.16A/18, WEA, Karol Bagh, New Delhi, a preliminary decree for partition was passed as far back as on 2nd May, 2013 declaring the plaintiff and the four defendants to be having 1/5th share each in the property.

2. Since then, the proceedings are pending for passing of the final decree for partition and it appears that the property has been agreed to be sold and the sale proceeds distributed as per the shares declared in the preliminary decree.

3. In between, the parties have been expiring and proceedings for substitution of their legal heirs are being taken.

4. Today also, it is stated that defendant No.1 Amarnath Wadhwa has died and on enquiry it is stated that the defendant No.1 Amarnath Wadhwa has left the plaintiff Ajay Kumar Wadhwa and the defendants No.2 to 4 Sunil Kumar Wadhwa, Sanjay Kumar Wadhwa and Anil Kumar Wadhwa as his sons and two daughters namely Anju Narang and Veena Madan, as his natural heirs. Both the said daughters are stated to be personally present in the Court and their counsel also appears.

5. The counsel who was earlier appearing for deceased defendant No.1 Amarnath Wadhwa as well as defendant No.4 Anil Kumar Wadhwa states that the deceased defendant No.1 Amarnath Wadhwa has left a registered Will bequeathing his share in the property to defendant No.4 only.

6. Needless to state, the others controvert.

7. However, the Will is not to be proved in this proceeding and if there is any dispute with respect to the document claimed to be the Will, the same has to be adjudicated in a separate proceeding and awaiting the outcome of the same, the share as far as of the deceased defendant No.1 Amarnath Wadhwa in the sale proceeds of the property is ordered to be kept deposited in this Court.

8. On oral request, all the natural heirs of the deceased defendant No.1 aforesaid are ordered to be substituted in place of deceased defendant No.1 Amarnath Wadhwa.

9. The counsel for the deceased defendant No.1 Amarnath Wadhwa and defendant No.4 to file amended memorandum of parties during the course of the day. Needless to state, this is without prejudice to the rights of defendant No. 4.

10. Once there is no dispute that the property is indivisible by metes and bounds and is to be sold, there is no impediment to passing a final decree for partition in this suit, of sale thereof and of distribution of sale proceeds in accordance with the shares declared in the preliminary decree for partition.
11. A final decree for partition of property No.16A/18, WEA, Karol Bagh, New Delhi is accordingly passed, of sale thereof and of distribution of sale proceeds in accordance with the preliminary decree for partition.
12. The parties/counsels inform that a Commissioner was appointed in this suit to auction the property and the proceedings for fixing the reserve price of the property are underway.
13. There is no need to undertake the said exercise in this suit. It will be open to the parties or to any of them to apply for execution of the final decree for partition and for the sake of saving cost and time, it is directed that if any such execution is filed, the same Commissioner who has already been appointed and the proceedings already undertaken by him, shall enure for the benefit of the execution as well.
14. The counsels, on enquiry state that no outsider is in possession of any part of the property. On enquiry, it is further stated that a provision for *inter se* bids has already been made in the proceedings in this suit.
15. Needless to state that the said procedure will continue in the execution as well.
16. The counsel for deceased defendant No.1 and defendant No.4 expresses inability to file amended memorandum of parties during the course of the day and seeks two days time therefor.

17. Mr. Shalabh Gupta, counsel for Mrs. Anju Narang and Mrs. Veena Madan to now file the amended memorandum of parties in the course of the day.

18. Leaving the parties to bear their own costs, decree sheet be drawn up.
A copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 15, 2018

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