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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2294/2013
BALRAM SANDHU Plaintiff

Through: Mr. Neeraj Yadav, Adv.

versus

VIKRAM SANDHU Defendant

Through: Ms. Risha Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.02.2018**

1. In this suit for partition of (i) property no.F-7, Green Park Main, New Delhi; (ii) plot *ad measuring 1 Bigha 2½ Biswansi*, Khasra no.13 of Village Yusuf Sarai, Tehsil Mehrauli, New Delhi situated at East of L-11, Green Park Extension, New Delhi; and, (iii) plot *ad measuring 60 sq. yds.in* Khasra no.530/509, Village Kharera, New Delhi situated on the West side of K/63, Green Park, New Delhi, (a) a preliminary decree of partition on consent, of properties no.(ii) & (iii) aforesaid was passed on 5th October, 2016 declaring the sole plaintiff and the sole defendant to be having 50% undivided share each therein; and, (b) a preliminary decree of partition, again on consent, of property at serial no.(i) above was passed on 19th July, 2017 again declaring the sole plaintiff and the sole defendant to be having 50% share each therein.

2. The proceedings since then are languishing.

3. Today also a request for passover is made by Ms. Risha Mitta, Advocate on behalf of Mr. Sandeep Sharma, Advocate for the defendant. The matter, if passed over, will not reach again and will again continue to languish.

4. The counsel for the plaintiff states that the property at serial no.(i) above though is constructed over land *ad measuring* 311 sq. yds. but is old and in a dilapidated condition and needs to be redeveloped and is thus impartible by metes and bounds. With respect to the other two properties, it is stated that they *ad measure* 50 and 60 sq. yds. each respectively and are again indivisible by metes and bounds. It is stated that the only way out is to do *inter se* bidding or to sell the properties to outsiders and divide the sale proceeds.

5. Ms. Risha Mittal, Advocate states that it is the plea of the defendant in his written statement that the plaintiff, though is out of possession of the properties, has not paid *ad valorem* court fees on the plaint. She contends that the said issue is to be decided.

6. The question of deciding the said issue now, especially after preliminary decrees for partition on consent have been passed, does not arise.

7. Even otherwise, Ms. Risha Mittal, Advocate is unable to show any such plea having been taken in the written statement.

8. Attention at this stage is drawn to para 21 of the written statement but which is not found to be a plea of ouster of the plaintiff who is admittedly a shareholder. There is thus no merit in the said plea. Possession of co-owner is on behalf of all owners unless a clear case of ouster for long of co-owner not in possession is pleaded and proved.

9. The counsel for the defendant having not submitted any proposal for division of the properties by metes and bounds till now inspite of preliminary decrees for partition having been passed sometime back, there is

no impediment to passing a final decree for partition as sought by the counsel for the plaintiff.

10. Ms. Risha Mittal, Advocate then states that the defendant along with his wife has been residing in property no.F-7, Green Park Main, New Delhi for the last forty years and both, he and his wife are suffering from ailments and do not want their possession to be disturbed.

11. It will always be open to the defendant to in the *inter se* bidding purchase the share of the plaintiff in the said property.

12. The counsel for the defendant seeks passover to come up with an offer for purchase.

13. The same cannot be permitted at this stage and the said exercise, if the parties are unable to carry out the same, is to be undertaken in execution of the final decree for partition.

14. Accordingly, a final decree for partition is passed of the properties aforesaid, of sale thereof and of distribution of sale proceeds between the parties as per their shares declared in the preliminary decrees for partition and subject to the condition that before the properties are put to open auction, the parties shall have a right to submit *inter se* bids with respect thereto with the party making the highest bid on the terms and conditions to be agreed before making of the bid shall be entitled to purchase the share of the other and the said other would on receipt of sale consideration of his share deliver vacant peaceful physical possession of the portion of the property in his possession/occupation to the party making highest bid shall execute the documents of transfer of his share in favour of the person making the highest bid.

15. The parties to bear their own costs.
Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 26, 2018
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