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

\+ **CS (OS) 3121/2014**

RAKESH SHARMA ..... Plaintiff

Through: Mr. Imran Ali, Advocate (M-9212696986).

versus

SURENDER SHARMA & ORS ..... Defendants

Through: Ms. Garima Sharma, Advocate for D-2 (M-9711561714).

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 16.11.2018

1. The present suit is a suit for partition and injunction. The parties are the legal heirs of Sh. Tilak Raj Sharma. The property of which partition has been sought is 3rd Floor, C-46, measuring 225 sq. yds. out of Khasra No.351, 352 and 353 situated in Mahendru Enclave, Village Malikpur Chhawni, G.T. Road, New Delhi-110033 (*hereinafter referred to as "suit property"*). After considering the averments in the plaint, this Court on 2nd December, 2016, passed a preliminary decree in the following terms:

> *"9. In view of the above, this court records satisfaction that the plaintiff has proved that the suit property was purchased, for consideration, in the name of the mother of the parties herein and since she died intestate in the year 2002, followed by the death of the father of the parties in 2008, also intestate, the right, title and interest in the suit property has devolved, by inheritance, in favour of the plaintiff, the first defendant and the predecessor-in-interest of the second defendant in equal shares, i.e., one third each.*

Therefore, a preliminary decree to this effect is hereby passed in favour of the plaintiff and against the defendants. Decree-sheet shall be accordingly drawn up."

2. Pursuant to the above mentioned decree which was passed, fresh summons was issued to the Defendants and finally Defendant no.1 was served by substituted service and Defendant No.2 put in appearance in the suit.

3. The contesting Defendant is Defendant No.2. Defendant No.1 has not entered appearance despite service. As per the counsel for the Plaintiff, the Plaintiff is in possession of the property. Defendant No.1 has shifted to Nagpur. Defendant No.2 has no objection if the final decree is also passed.

4. A final decree is, accordingly, passed declaring all three parties i.e. Plaintiff – Sh. Rakesh Sharma, Defendant No.1 – Sh. Surendra Sharma and Defendant No. 2 Smt. Shobha Sharma through her legal heirs as 1/3rd owners of the suit property. Parties are permitted to discuss among themselves the possibility of metes and bound partition, and if the same is not possible, the parties can proceed to auction the property and share the proceeds in 1/3rd each.

5. Decree sheet be drawn accordingly. All pending I.As are disposed of.

PRATHIBA M. SINGH, J.

NOVEMBER 16, 2018
Rahul