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

+ CS(OS) 486/2016 & IA No.11783/2016 (u/O XXXIX R-1&2 CPC)

SAVITA SARDANA

..... Plaintiff

Through: Mr. Manish Kumar Srivastava, Adv.

Versus

SATISH PAUL & ORS

..... Defendants

Through: Mr. Puneet Bajaj, Adv. for D-12,&4
with D-1,2& wife of D-4 in person.

Mr. Ashish Garg and Mr. Govind
Singh, Advs. for D-3A&3B.

Mr. Ashim Vachher, Adv. for
applicants.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

12.12.2018

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1. Vide order dated 14th November, 2018 in this suit for partition of property No.R-496, New Rajinder Nagar, New Delhi, a preliminary decree for partition was passed, declaring the plaintiff and the four defendants to be having 1/5th share each in the property. However, since the defendant No.3 Ajay Paul died during the pendency of this suit and was substituted by his mother, defendant No.1 Satish Paul as well as by his wife Sweety Paul and minor daughter Mehak Paul, it was further clarified that 1/5th share of defendant No.3 Ajay Paul devolves equally to defendant No.1 Satish Paul, Sweety Paul and Mehak Paul. Vide the same order, the parties were also referred to Mediation Cell of this Court.

2. The counsel for the parties state that though before the Mediation Cell no settlement was executed, but the parties subsequent to mediation have mutually and amicably drawn up a Settlement Agreement dated 11th December, 2018. The said Settlement Agreement comprising of three pages is handed over in the Court and is taken on record and the counsels state that it bears the signatures of the plaintiff, defendant No.1, defendant No.2, wife of defendant No.4 duly authorised in this regard and of Sweety Paul, wife of defendant No.3, for herself as well as on behalf of her minor daughter Mehak Paul.

3. The counsel for Sweety Paul and Mehak Paul also states that the said Sweety Paul and Mehak Paul and the defendant No.1 are in possession of the ground floor of the property and the defendant No.4 Rajan Paul and his family members are living outside India and only during their visits to India come and reside on the ground floor in the property and for this reason they have been mentioned in the Settlement Agreement as residents of the ground floor of the property. The same is not controverted by other appearing counsels.

4. The counsels state that it has been agreed that the defendant No.1 Satish Paul relinquishes 1/3rd share out of 1/5th share of her son Ajay Paul in favour of Sweety Paul and Mehak Paul. The counsel for the defendant No.1 confirms and he states that the defendant No.1 is also present in person in the Court.

5. Though in the Settlement Agreement, execution of a Relinquishment Deed in this regard is envisaged but I am of the opinion that on the statement of the counsels, the preliminary decree for partition can be altered today

itself.

6. Accordingly, the preliminary decree dated 14th November, 2018 of partition is modified by providing that 1/5th share of deceased defendant No.3 Ajay Paul is inherited by his wife Sweety Paul and Mehak Paul only.

7. A modified preliminary decree for partition be drawn up.

8. The counsels further state that it has been agreed that no final decree for partition be passed and the parties are satisfied with the preliminary decree for partition and will mutually sell the property as and when required and distribute the sale proceeds as per their shares declared under the preliminary decree for partition dated 14th November, 2018, as modified today. It is further stated that the parties will maintain *status-quo* qua title and possession.

9. The aforesaid settlement is found to be lawful and is taken on record.

10. Counsel appears for Smt. Sudershan Paul, Atul Chander Paul and Amita Manaktala (hereinafter called applicants), being the wife and children of deceased Ramesh Chander Paul and states that the said persons also are owners of the property and are in possession of entire first floor of the property and the said facts have been concealed from this Court.

11. On enquiry, it is stated that the property was originally allotted in the name of Ram Bheja Mal who died leaving, besides Jagdish Chander Paul, the predecessor of parties to this suit, two other sons namely Ramesh Chander Paul and Prakash Chander Khetrapal and two daughters, but Conveyance Deed pursuant to allotment was executed in favour of Jagdish Chander Paul only. It is stated that Ramesh Chander Paul, being the predecessor of the applicants, and Prakash Chander Khetrapal had also

contributed to the purchase consideration and are thus also the owners.

12. It is further stated that the applicants have filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 but which has not been listed today. A photocopy of the application without documents is handed over in the Court and is taken on record.

13. No case for impleadment is made out. The remedy, if any of the applicants is otherwise.

14. The counsel for the applicants then states that since the applicants are in possession of the first floor of the property for long, they also have claim on the basis of prescription.

15. Claim of lawful title and claim on the basis of prescription are antithetical to each other and are not maintainable as per law laid down in *Annasaheb Bapusaheb Patil Vs. Balwant* (1995) 2 SCC 543, *Mohan Lal Vs. Mirza Abdul Gaffar* (1996) 1 SCC 639, *Karnataka Board of Wakf Vs. Government of India* (2004) 10 SCC 779, *T. Anjanappa Vs. Somalingappa* (2006) 7 SCC 570, *P.T. Munichikkanna Reddy Vs. Revanna* (2007) 6 SCC 59 and *L.N. Aswathama Vs. P. Prakash* (2009) 13 SCC 229.

16. The aforesaid confirms that the applicants are neither necessary nor proper parties to the present suit.

17. The need to wait the application is thus not felt.

18. It is however made clear that the aforesaid observations will not bind in any other proceedings, if any instituted by the applicants.

19. Since the counsel states that they do not desire a final decree for partition pursuant to the preliminary decree for partition, the suit is disposed of, leaving the parties to bear their own costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 12, 2018

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