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

+ **RFA 832/2016 & CM APPL.44787/2016**

PREM SAGAR NAYYAR

..... Appellant

Through: Ms. Sonali Malhotra, Advocate (M-9818024129)

versus

DHARAM PAL NAYYAR & ORS.

..... Respondents

Through: Mr. K.S. Taneja & Mr. Ashok Anand, Advocates for R-1 to 6 (M-9818479303) along with R-7 in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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31.05.2018

1. The present appeal has been preferred by the Appellant/Shri Prem Sagar Nayyar against the judgment and decree dated 19th August 2016, passed by the Trial Court in suit No. 608884/16.
2. By the impugned judgment, the Trial Court has decreed the suit and granted a preliminary decree of partition of the suit property bearing No. T-48, Rajouri Garden, New Delhi (*hereinafter, 'suit property'*). The Trial Court has primarily granted 1/6th Share to each of the children of Smt. Laxmi Nayyar. The challenge to this judgment/decreed by the Appellant is based on a Will dated 14th July, 1990 registered on 24th July, 1990. The original Will is on the record of the Trial Court.
3. Late Smt. Laxmi Nayyar was blessed with four sons and two

daughters. They are Sh. Prem Sagar Nayyar, Sh. Dharam Pal Nayyar (Respondent no.1), Smt. Neera Nayyar (Respondent no.2), Smt. Sudershan Puri (Respondent no.3), Smt. Promilla Arora (Respondent no.4) and Sh. Madan Lal Nayyar (Respondent no.7). The Appellant is the only child of Smt. Laxmi Nayyar who is alive. All the others are represented by their children. Respondents 3 and 4 are the sons of Respondent no.2. Respondent no. 5 is represented before the Court by her son Sh. Suresh Puri. Respondent no.6 is represented by her husband Sh. Krishna Gopal Arora and son Arun Arora. Respondent 6(b) who is another son is hospitalised and is stated to be in ICU. Respondent no.7 is represented by his son Sh. Vijay Kumar Nayyar. Currently Appellant and Respondent no.7's son Sh. Vijay Kumar Nayyar are in possession of the suit property. All the parties are duly represented before this Court except the family of Smt. Neera Nayyar who are residents of Canada. They have, by email dated 30th May, 2018 duly authorised their Counsel Mr. K.S.Taneja to enter into a settlement. Copy of the said email is taken on record.

4. Keeping in mind the purpose and intention of their mother as expressed in the Will, the parties have arrived at a settlement on the following terms and conditions:-

- a. The suit property shall be handed over to a builder/Deepak Chhabra who will demolish the existing structure and carry out construction in the same.
- b. As permitted by the bye-laws and the master plan etc., the builder would construct basement, stilt parking, ground floor, first floor, second floor and third floor in the suit property.
- c. The Builder would be responsible to obtain all the sanctions

required for the demolition, construction, and completion of the building. During the period when the construction would take place, and till the time the possession is handed over to them in terms of the settlement, the builder would provide two flats on rent for the residence of Shri Prem Sagar Nayyar and the family of Shri Madan Lal Nayyar who are currently residing in the suit property, in the area of Rajouri Garden. The flats so taken on rent shall be minimum of 3 BHK.

d. The parties have further agreed that the ground floor would fall in the share of Mr. Prem Sagar Nayyar.

e. The first floor would fall in the share of the builder. The basement, second floor and third floor would fall in the share of the families of Shri Dharam Pal Nayyar, Smt. Neera Nayyar, Shri Sudarshn Puri, Smt. Promila Arora and Shri Madan Lal Nayyar jointly. The roof/terrace shall be for common use of all the occupants of the building including for placing of water tanks and other common amenities etc., Owners/occupants of all floors shall have unimpeded access to the terrace/roof of the property and no party shall claim exclusive rights in the use of terrace/roof.

f. The timeline to be followed in respect of demolition and construction of the property would be as under:-

- i. The builder shall identify the flats to which the Appellant and Respondent No. 7's family would shift within a period of one month.
- ii. After identification of the flats, within a period of one month, the family of the Appellant and Respondent No. 7 shall shift to

their respective premises taken on rent by the builder.

- iii. The demolition of the building shall begin on or before 1st September 2018, and the construction shall be completed within eighteen months thereafter.
- iv. Upon the completion of construction and upon obtaining the completion certificate, the builder shall hand over the possession of the ground floor of the property to Shri Prem Sagar Nayyar. At the time of taking possession Shri Prem Sagar Nayyar shall pay a sum of Rs. 26,00,000/- to Sh. Suresh Puri. Simultaneously, Shri Prem Sagar Nayyar shall also deposit a sum of Rs. 14,00,000/- with Anandpur Dharmik Sanstha, located in Madhya Pradesh, as mentioned in the Will. The receipt confirming deposit shall be placed on the record of this Court after serving copies on all the other parties, within 30 days after taking possession of the Ground Floor of the property from the Builder.
- v. The builder shall handover possession of the basement, second floor, and third floor to Mr. Suresh Puri in the presence of Mr. Vijay Kumar Nayyar, Mr. Dharam Pal Nayyar, Mr. Krishan Gopal and Mr. K.S. Taneja, representing Smt. Neera Nayyar. The proceeds of the basement, second floor and third floor will be divided amongst themselves by mutual agreement.
- vi. The builder after handing over of the possession to Mr. Prem Sagar Nayyar and the other parties as mentioned above would be the exclusive owner of the first floor of the property.
- vii. The sale deed in favour of the builder for the first floor shall be

signed by Mr. Prem Sagar Nayyar, Mr. Suresh Puri, Mr. Tarun Arora, Mr. Vijay Kumar Nayyar and Mr. Dharam Pal Nayyar and Mr. K.S. Taneja or any other power of attorney holder duly authorised by Smt. Neera Nayyar.

- viii. Upon the possession being handed over, Mr. Prem Sagar Nayyar shall be exclusive and sole owner of the ground floor of the property. The remaining floors i.e. basement, second floor, third floor shall vest with the families of Mr. Dharam Pal Nayyar, Smt. Promila Arora and Smt. Sudarshn Puri and they shall be joint owners of the basement, Second and Third Floor. If as per any amendment in the bye-laws, an additional floor is permitted to be constructed, each of the six families of the six children of Late Smt. Laxmi Nayyar shall have 1/6th share each in the said additional floor.
 - ix. The parties shall cooperate with each other fully and will not cause any impediments in the implementation of the settlement as recorded above as also in the day to day dealings with the builder.
 - x. Insofar as the construction on the ground floor is concerned, the same would be built as per the wishes of Mr. Prem Sagar Nayyar. The builder shall consult with him for designing the interiors of the ground floor.
5. The parties append their signatures below in confirmation and agreement to all the terms and conditions of the settlement as recorded hereinabove. The builder Mr. Deepak Chhabra shall also sign below as a confirming party. All parties including the builder shall be bound by the

terms and conditions contained hereinabove.

6. The parties including the Builder who is the confirming party, are given liberty to approach the Court, in case of any difficulty in implementing the settlement.

7. The appeal is disposed of as settled. The impugned judgment/decreed shall stand modified as per the terms of settlement mentioned hereinabove. The decree sheet shall be drawn as per settlement terms hereinabove.

PRATHIBA M. SINGH, J

MAY 31, 2018

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