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

+ **CS(OS) 365/2017**

D.P. MAHAJAN AND ANR

..... Plaintiffs

Through: Mr. Parag Tripathi, Sr. Adv. with Mr.
Pragyan Sharma, Ms. Mishika
Bajpai, Ms. Anandini Kumari and Mr.
Rishabh Kaur, Advs.

versus

ALOK MAHAJAN AND ORS

..... Defendants

Through: Mr. Rajesh Arya, Adv. for D-1, 6 to
9.
Ms. Priyanka Sharma Goswami and
Ms. Snusuya Sadhu Sinha, Advs. For
D- 2 to 5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.02.2018

1. A preliminary decree for partition was passed on 29th November, 2017 and the counsels asked to inform by today, whether the property is divisible by metes and bounds and to put forth their proposals for the same.
2. The counsel for the defendants no.1,6 to 9 first seeks adjournment stating that the defendant no.1 is in ICU since 10th February, 2018.
3. The defendant no.1, after 29th November, 2017, had sufficient time to place the proposal and adjournment cannot be granted in this fashion.
4. The counsel for the defendants no.1,6 to 9 then states that the plaintiffs have sought partition in terms of Settlement Deed dated 21st September, 2015 and the defendants no.1,6 to 9 are agreeable thereto.
5. The senior counsel for the plaintiffs has drawn attention to prayer paragraph '(b)' of the plaint where the plaintiffs, pleading that partition by

metes and bounds is impractical, have sought the relief of vacation of the property by defendants no.1,6 to 9 on receipt of the value of their share. It is further the contention that this Court has on 29th November, 2017 passed a preliminary decree for partition and today it is not open to the counsel for the defendants no.1,6 to 9 to seek partition in terms of Settlement Deed dated 21st September, 2015.

6. The senior counsel for the plaintiffs has further disclosed that the defendants no.1,6 to 9 have preferred an appeal against the preliminary decree for partition, which was listed before the Division Bench yesterday and there is no stay of proceedings in this suit and rather the order makes it clear that there is no stay.

7. The counsel for the defendants no.2 to 5 support the plaintiffs.

8. The property, with respect to which the preliminary decree for partition has been passed, is house No.185, Block-E, Greater Kailash Part-I, New Delhi informed to be constructed over 206 sq. yds. of land and comprising of ground floor, first floor, and fully constructed second floor with common entrance passages, water tanks, kitchen, electricity connection and drawing room, as per the counsel for the defendants no.1,6 to 9 as well. The Settlement Deed dated 21st September, 2015 is of the date when there was bonhomie between the parties and the parties were living as members of a family. However as the judgment passing the preliminary decree for partition would show, now there is acrimony between the parties with the parties also being at variance as to the version of the Settlement Deed dated 21st September, 2015. Today, it cannot be said that it is possible/convenient to divide the property in terms of Settlement Deed dated 21st September,

2015. Though the counsels for the parties were given an opportunity to place their proposals for partition by metes and bounds but neither counsel has placed the same. On the contrary, the senior counsel for the plaintiffs and the counsel for the defendants no.2 to 5 state that a final decree for partition by sale of the property and distribution of the sale proceeds as per the respective shares declared in the preliminary decree for partition be passed with liberty to the parties to purchase each other's share/s. Since the defendants no.1,6 to 9 have not placed before this Court any proposal for partition of the property by metes and bounds in five shares with the defendants no.1,6 to 9 being willing to take any of the said five portions, it is clear that the property cannot be divided by metes and bounds.

9. Accordingly, a final decree for partition of property no. 185, Block-E, Greater Kailash Part-I, New Delhi is passed, of sale thereof and by distribution of sale proceeds amongst the parties as per the shares declared in the preliminary decree for partition and with the sale, in the first instance being inter se the parties to the suit, with the party making the highest bid being entitled to purchase the share/s of others on payment of purchase consideration of the share/s of others and the selling party/s being required to deliver vacant peaceful physical possession of the portion of the property in his/her possession to the purchasing party against execution of documents of transfer of share. Only if the same is not possible, will the property be put to sale to outsiders.

All parties are further directed to, till execution of the decree, maintain *status quo* qua title, possession and construction and not to induct any other person into possession of the property.

10. On enquiry, the counsels state that the parties alone are in possession of the property and no outsider is in possession of the property.

11. Either party shall be entitled to apply for execution of this final decree for partition.

12. The parties are left to bear their own costs.

Decree sheets be drawn up.

Dasti.

RAJIV SAHAI ENDLAW, J

FEBRUARY 13, 2018

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