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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 610/2017 & IA No.13243/2017 (u/O XXXIX R-1&2 CPC).
SACHIN SABNANI Plaintiff

Through: Mr. Vijay K. Gupta and Mr. Mehul
Gupta, Advs.

versus

HOTCHAND SABNANI Defendant

Through: Mr. Ajay Bahl, Mr. K.K. Nangia and
Mr. Vikash Sharm, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.05.2018

1. The plaintiff has instituted this suit for partition of property no.13/10, East Patel Nagar, Delhi.
2. Though the suit as originally instituted, besides against the defendant no.1, was also against Land & Development Office (L&DO) arrayed as defendant no.2, but the defendant no.2 was deleted vide order dated 17th January, 2018.
3. The counsel for the plaintiff states that the defendant in his written statement has not disputed the share of the plaintiff and the defendant in the property to be one half each and a preliminary decree for partition can be passed forthwith.
4. The counsel for the defendant confirms, though states that an application filed by the defendant is also listed today.
5. Vide *ex parte ad interim* order dated 17th January, 2018, the plaintiff as well as the defendant were directed to maintain *status quo* qua title, construction and possession of the property aforesaid.

6. The said order is made absolute during the pendency of the suit and IA No.13243/2017 is disposed of.

7. IA No.4231/2018 has been filed by the defendant for installation of overhead tank on the roof above the second floor. Though the counsel for the plaintiff opposes the application but in view of what is recorded hereinbelow, without prejudice to the rights and contentions of the parties and in the hope that the parties will be able to resolve the matter amicably, the defendant, at his expense is permitted to shift the water storage tank presently installed on the roof of the ground floor to the roof of the second floor without however causing any disturbance, inconvenience, harassment or damage to the plaintiff or to the property in occupation of plaintiff. The plaintiff shall facilitate implementation of the order.

8. IA No.4231/2018 is disposed of.

9. In accordance with the above, a preliminary decree for partition is passed, declaring the plaintiff and the defendant to be having one half undivided share each in the property no.13/10, East Patel Nagar, Delhi including in the leasehold rights in the land underneath the said property.

10. Decree sheet be drawn up.

11. The counsels also state that the property is not divisible by metes and bounds and a final decree for partition of sale, giving the parties option of *inter se* bidding, be also passed.

12. Accordingly, a final decree of partition of property no.13/10, East Patel Nagar, Delhi is also passed, of sale of the property and of distribution of sale proceeds between the parties as per their respective share declared in the preliminary decree for partition. However before the property is put to

auction to outsiders, the parties shall have an option of *inter se* bidding, with whichever party bids more, acquiring the share of the other against execution of documents of transfer of the said share and delivery of vacant peaceful physical possession of the entire portion in occupation of the selling party.

13. The parties to bear their own costs.
14. Final decree for partition be also drawn up.
15. The date of 31st July, 2018 before the Court is cancelled.
Dasti under signatures of Court Master.

RAJIV SAHAI ENDLAW, J

MAY 28, 2018
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