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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 8th November, 2019

+ **CM (M) 1600/2019 & CM APPLs.48477-79/2019**

MOHD IQBAL & ORS. Petitioners
Through: Mr. Aly Mirza, Advocate.
(M:9899720944)
versus

NAJMA (DECEASED) THR LRS & ORS. Respondents
Through: Mr. Kaustubh Anshunag and Mr.
Pankaj Mehta, Advocates for
Administrator General/R-8.
(M:9811778452)

AND
+ **CM (M) 1604/2019 & CM APPLs.48519-21/2019**

MOHD IQBAL & ORS. Petitioners
Through: Mr. Aly Mirza, Advocate.
versus

NAJMA (DECEASED) THR LRS & ORS. Respondents
Through: Mr. Kaustubh Anshunag and Mr.
Pankaj Mehta, Advocates for
Administrator General/R-8.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petitions have been filed challenging the impugned orders dated 19th January, 2019 and 17th August, 2019.
2. A suit for partition came to be filed in respect of the assets of Late Mohd. Ahmed (*'the deceased'*) being CS (OS) 572/1990 titled *Mohd. Iqbal & Ors. v. Mst. Najma & Ors.* The main dispute in the suit was as to whether or not Mst. Najma was the wife of Late Mohd. Ahmed, and whether

her children are also entitled to a share in the property of the deceased. In the suit, the suit properties of which partition was sought, were as under:

“(A) 1/3rd undivided share in property No.7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi; and

(B) Share as co-lessee in leasehold property No.A-96/10, Wazirpur Industrial Area, Delhi, admeasuring 457.80 sq. yards with the Plaintiff No.2 being the other co-lessee.”

In respect of the Wazirpur property, the suit was dismissed and the decree was passed only in respect of the Sadar Bazar property. By a detailed judgment of a Id. Single Judge of this Court on 14th December, 2012, a preliminary decree was passed in respect of one of the properties, which is located in Sadar Bazar. The operative portion of the said preliminary decree reads as under:

“34. For the aforesaid reasons, the suit of the plaintiffs is decreed partly to the extent that a preliminary decree is passed by declaring that plaintiffs and defendants are legal heirs of the deceased except defendant No.1 who is wife, and they are entitled to succeed to his property i.e. 1/3rd share in the property bearing No.7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi in the shares provided by Muslim Law as detailed in para 4 of the plaint. The defendant No. 1 who is in possession is restrained from creating third party interest or transferring possession of any portion of the suit property to any third party until a final decree is passed by this Court. Parties are granted liberty to give their necessary suggestions within 8 weeks from today with regard to partition by metes and bounds or any other method or manner for the purpose of passing the final decree. Rest of the prayers made by the plaintiffs mentioned in the plaint

are dismissed. Issue No.7 is also decided accordingly. Parties to bear their own costs.”

3. The decree was to be in terms of paragraph 4 of the plaint, wherein the shares were pleaded as under:

“1.	<i>Defendant No.1 (widow)</i>	<i>1/8th share</i>
2	<i>Plaintiff no.1</i>	<i>14/88 share</i>
3	<i>Plaintiff no.2</i>	<i>14/88 share</i>
4	<i>Defendant no.3</i>	<i>14/88 share</i>
5	<i>Plaintiff no.3</i>	<i>7/88 share</i>
6	<i>Plaintiff no.4</i>	<i>7/88 share</i>
7	<i>Defendant no.2</i>	<i>7/88 share</i>
8	<i>Defendant no.4</i>	<i>7/88 share</i>
9	<i>Defendant no. 5</i>	<i>7/88 share”</i>

4. After passing of the preliminary decree, Plaintiff No.2 – Mohd. Akhlaq has passed away, and his legal heirs have been impleaded as Defendant Nos.7(i), (ii), (iii).

5. Two of the Defendants, in whose favour the decree has been passed, are residents of Pakistan i.e. Defendant Nos.4 & 5.

6. The suit, in view of the increase in the pecuniary jurisdiction of the Delhi High Court, was transferred to the District Court. Thereafter, the parties explored modes for partitioning the properties by metes and bounds, by appointing a local commissioner. The order dated 5th September, 2017 reads as under:

“I heard arguments on the application made on behalf of the plaintiff under order 22 rule 4 (1) & rule 4 (4) CPC seeking therein exemption from substitution of LRs of deceased defendant no. 4. In the application it is stated that defendant no. 4, namely, Huma Bano died on 06.04.2016 at Lahore, Pakistan and during her life time, she did not file WS nor entered her appearance in

the present suit despite service. Thus, the plaintiff has sought exemption from impleadment of LR of deceased defendant no. 4. Application is supported by the affidavit. Let us go through the relevant provision of law as under

Order 22 rule 4 (4) CPC says that-

"The court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representative of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same and force and effect as if it has been pronounced before death took place"

Considering the circumstances mentioned in the application and the above legal position in this regard, I exempt the plaintiff from impleading the LR of deceased defendant no.4.

Application accordingly, stands disposed of.

Further, I heard arguments on the another application of the plaintiff under order 22 rule 4 (1) & rule 4 (4) CPC seeking therein exemption from substitution of LR of deceased defendant no.- 6 Vinod kumar. In the application it is stated that defendant no. 6, namely, Vinod Kumar, who was the tenant in one of the properties in question, has passed away and during his life time, he did not file WS nor entered his appearance in the present suit despite service. Thus, the plaintiff has sought exemption from impleadment of LR of defendant no.6. Application is supported by the affidavit. Considering the circumstances mentioned in the application, I exempt the plaintiff from impleading the LR of deceased defendant no.6 also.

Application accordingly, stands disposed of.

Further, Ld. Counsel for the plaintiffs made an application under order 26 rule 13 and 14 r/w section

151 CPC for appointment of Local Commissioner.

In the said application it is stated that the present suit was filed for partition of two properties. However, by preliminary decree dated 14.12.2012, the suit was partly decreed in respect of partition of property bearing no. 7649, Gali Munshi Abdul Rahim Qureshi Nagar, Delhi-110006 and the suit for partition pertaining to other property was dismissed for which the appeal is pending before the Hon'ble High Court. Thus, the counsel for the plaintiff requested for appointment of a Local Commissioner to suggest the mode of partition in accordance with the shares defined in preliminary decree dated 14.12.2012 passed by the Hon'ble High Court.

I heard the submissions and perused the record.

In view of the submissions, I appoint Shri. Yashvant Singh, Advocate, Enrollment No. D/327/95 Chamber No.K-53, District Courts, Tis Hazari Courts, Delhi-54, Mobile Nos. (i) 9310096440 as Local Commissioner to visit and inspect the suit property bearing no. 7649, Gali Munshi Abdul Rahim Qureshi Nagar, Delhi-110006. The L.C. shall submit his report, after taking suggestions from the parties to the suit, for partition of the abovementioned suit property by metes-and-bounds. Fees of the Local Commissioner is fixed at Rs.20,000/- to be borne by the plaintiffs. All the parties to the suit are directed to co-ordinate and co-operate with the Local Commissioner. The plaintiff shall also facilitate for LC's visit to the site..

Now, matter be listed for filing of status report by Local Commissioner/further proceedings on 26.09.2017 Copy of this order be given dasti to the parties."

7. Vide the above order, it is evident the Court also granted exemption from substitution of the legal heirs of Defendant No.4 namely Mst. Huma Bano and Defendant No. 6 – Mr. Vinod Kumar.

8. The Local Commissioner, who was appointed, thereafter visited the property. Various parties including Mst. Najma Begum and Mst. Ayesha Nadeem were present and their presence, the local commission was executed. The Local Commissioner finally suggested that 1/3rd of the property could be sold by way of auction, and sale proceeds would be distributed between the legal heirs. Relevant portion of the report of the Local Commissioner reads:

“11. That the above said property is surrounded by other properties and is having only one entrance gate of about 4 Ft. wide opens in a narrow street and it appears that 1/3rd portion of undivided property between 8 legal heirs of Mohd. Ahmad is very tough. Therefore, as per direction of this Hon'ble Court I got suggestions from the above said persons who were present on the spot. All of them suggested that the entire property or 1/3rd undivided share of the property may be sold in Auction and all of them are ready to get their share in terms of money as per their respective shares.

12. That in view of suggestions given by above said parties, considering the size of the property and number of legal heirs/co-owners, of above said property, it will be better that the suit property i.e. 1/3rd of entire property may be sold out by way of auction and sale consideration may be distributed between the legal heirs/parties as per their respective share.”

9. After submission of the report of the Local Commissioner, which was dated 31st October, 2017, the matter continued to remain pending before the Trial Court as, repeatedly, on one ground or the other, the final decree was not passed. The Plaintiffs are aggrieved by the delay in passing of the final decree and further that recently, two orders have been passed by which the

office of the Administrator General has been directed to appear and make submissions in respect of Defendant nos 4 and 5.

10. In order dated 19th January, 2019, the Trial Court has held that the estate of Defendant Nos.4 & 5 has not been represented and hence, impleadment of the Administrator General would be necessary. This is challenged in CM (M) 1600/2019 on the ground that the Trial Court has completely changed the direction of the matter. The suit property did not belong to Defendant Nos.4 & 5. Most of the legal heirs of the deceased are in India and only two of the legal heirs have moved to Pakistan. However, the preliminary decree needs to be given effect to, and hence the manner in which delay has been caused due to repeated procedural and technical issues is, irreparable injury is being caused to the Plaintiffs, who are all senior citizens. Mr. Mirza, ld. counsel submits that one of the Plaintiffs is over 70 years of age and Defendant No.1 has already passed away this year, thus, owing to the age of the parties, no purpose would be served in keeping the matter pending.

11. Ld. counsel appearing for the Administrator General submits that the position of the Administrator General is vacant at this point and so he does not have proper instructions in the matter. He further submits that he has no objection in being present at the time of auction.

12. Under the Administrators-General Act, 1963, the role of the Administrator General is to administer the assets belonging to persons as stipulated in Section 9. The Administrator General steps in only when there is an apprehension of misappropriation and deterioration, or waste of the assets and if the Court is satisfied that such conditions exist, the letters of administration can be granted to the Administrator General. Further, under

Order XXII Rule 4A CPC, if there is no legal heir for any particular person, by an order, the Court may appoint the Administrator General. In the present case, two of the legal heirs, who are claiming a part of the share of the deceased, are residents of Pakistan. All the remaining legal heirs and parties are represented before the Court. As held in the judgment of Karnataka High Court in *Smt. K. S. Nagamma v. Mrs. M. P. Manekshah*, ILR 2004 KAR 2309, the Administrator General can facilitate or assist the Court in giving effect to the orders passed by the Court. The Administrator General may have no role to play in these circumstances. However, only in order to ensure that the sale of the property is conducted properly, the presence of the Administrator General at the time of the sale is being permitted.

13. After hearing the Id. counsel for the Plaintiffs and perusing the record, it is clear that the preliminary decree was passed way back in 2012, though the suit dates back to 1990. The suit itself being almost 30 years old, the preliminary decree having been passed seven years ago and the age of the parties has persuaded this Court to direct that the sale of the suit property would be conducted by way of auction. Accordingly, the suit is finally decreed in the following terms:

- i. A decree of partition is passed holding the following parties to be entitled to the following shares in the *1/3rd undivided share in property No.7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi* ('suit property') as under:

<i>S. no.</i>	<i>Party in the suit</i>	<i>Share in the 1/3rd Estate of Mohd. Ahmed</i>
<i>1.</i>	<i>Plaintiff No.1 – Mohd. Iqbal S/o Late Mohd. Ahmed</i>	<i>14/88th</i>

2.	<i>Plaintiff No.3 – Mst. Naeema Bano W/o Hafiz Mohd. Akhlaq</i>	$7/88^{th}$
3.	<i>Plaintiff No.4 – Mst. Mughlani Begam W/o Late Mussarat Hussain</i>	$7/88^{th}$
4.	<i>Defendant No.1 – Mst. Najma (now deceased through LRs)</i>	$1/8^{th}$
5.	<i>Defendant No.2 – Mst. Aisha D/o Mst. Najma</i>	$7/88^{th} + 1/24^{th}$ (devolved from defendant No.1 mother's $1/8^{th}$ share)
6.	<i>Defendant No.3 – Mohd. Shuaib S/o Mst. Najma</i>	$14/88^{th} + 2/24^{th}$ (devolved from defendant No.1 mother's $1/8^{th}$ share)
7.	<i>Defendant No.4 - Mst. Huma Bano W/o Mohd. Masood</i>	$7/88^{th}$
8.	<i>Defendant No.5 – Mst. Naseema Bano W/o Mohd. Naseem</i>	$7/88^{th}$
9.	<i>Plaintiff No. 2 –Mohd. Akhlaq Now Deceased) through LRs</i>	$14/88^{th}$
10.	<i>Defendant No.7(i) – Mst. Safia Begum W/o Late Mohd. Akhlaq</i>	$14/88 \times 1/8 = 14/704^{th}$ (devolved from Plaintiff No.2's share of $14/88^{th}$ share)
11.	<i>Defendant No.7(ii) – Mohd. Adnan S/o Late Mohd. Akhlaq</i>	$49/704^{th}$ (devolved from Plaintiff No.2's share of $14/88^{th}$ share)
12.	<i>Defendant No.7(iii) – Mohd. Osama S/o Late Mohd. Akhlaq</i>	$49/704^{th}$ (devolved from Plaintiff No.2's share of $14/88^{th}$ share)

ii. Partition by metes and bounds is not possible. Accordingly, the Local Commissioner is directed to carry out auction of the $1/3^{rd}$ share of the property bearing no.7649, Gali Munshi Abdul Rahim, Quresh Nagar, Delhi-110006. The reserve price for the property and the other conditions for auction shall be fixed by the Trial Court.

iii. After conduct of the auction, the sale proceeds would be distributed amongst all the legal heirs in the shares as mentioned above.

14. During the process of auction, a representative of the counsel for Administrator General shall be present only in order to ensure that the auction proceedings are conducted in a proper and legal manner. The auction purchaser shall deposit the entire consideration before the Trial Court, which shall be distributed by the Trial Court in the shares specified above.

15. Insofar Defendant Nos.4 & 5 are concerned, their shares of the sale proceeds in the suit property shall remain deposited with the Trial Court. The remaining parties shall be released their respective shares by the Trial Court. CM (M) 1600/2019 is accordingly disposed of. Decree sheet be drawn by the trial court in the above terms.

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16. In this petition the impugned order dated 17th August, 2019 has directed impleadment of the legal heirs of Defendant No.6 once again, when Defendant No.6, who was a tenant in the property, was already exempted. Thus, this order was not called for. Insofar the legal heirs of Defendant No.1 are concerned, an application has been placed on record. The legal heirs of Defendant No.1 are already on record, hence no further orders are called for.

17. Both the petitions are disposed of. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 08, 2019/dk

Corrected & released on 20th November, 2019