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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 16/1998**
UMA TEWARI AND ORS.

..... Plaintiffs

Through: Mr. Manish Vashisht, Mr. Sameer
Vashisht, Mr. Manashwy Jha and Ms.
Urvi Kapoor, Advs.

versus

RANI RAJINDER KAUR AND ORS.

..... Defendants

Through: Mr. Kuljeet Rawal, Adv. for D-1 &
D-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **17.09.2019**

At the outset, Mr. Manish Vashisht, learned counsel appearing for the plaintiffs submits that the plaintiffs wishes to drop the defendant Nos.3 and 4 as no relief has been prayed against the said defendants. It is ordered accordingly.

Let amended memo of parties be filed during the course of the day.

I.A. 12843/2019

1. This is a joint application filed by the plaintiffs and the defendant Nos.1 and 2. The same has been signed by the parties and their Advocates. The application is accompanied by the affidavits of the parties.

2. The paras 2 to 5 of the application reads as under:-

“2. That it is submitted that the Defendants No. 3 and 4 have sold their share of the suit property in favour of the Plaintiffs

vide Sale Deeds dated 21.09.1995 and during the pendency of the present suit, the Plaintiffs and Defendants No. 3 and 4 have resolved their disputes. Therefore, they are not contesting the present suit.

3. That the Plaintiffs and the Defendants No. 1 and 2 both acknowledge each other as owners of 50% each of the suit property. The Plaintiffs and the Defendants No. 1 and 2 acknowledge and admits that the suit property is an undivided one and the same at present is under the occupation of the defendant nos. 1 and 2. Both the parties thus have an equal right, i.e. plaintiffs as one set has 50% of the undivided interest in the suit property and the Defendants No. 1 and 2 as the other set has 50% of undivided interest in suit property.

4. That the plaintiffs and the defendants no. 1 and 2 therefore prays that this Hon'ble Court maybe pleased to pass a preliminary decree holding the plaintiffs as one set and defendants no. 1 and 2 as other set has 50% share each in the suit property bearing no. E-552, Greater Kailash, Part- II, New Delhi.

5. That the parties to the suit at the moment do not press for any further relief viz a viz the suit property as they have decided to get the suit property developed through a builder. However, the defendant nos. 1 and 2 undertakes and assures the plaintiffs that in order to protect their interest in the suit property to the extent of 50%, the defendants shall vacate and

handover the actual physical and peaceful possession of the entire suit property to the builder who shall develop the property for the advantage of the parties to the present settlement. The parties herein, will enter into a separate agreement with the builder in respect of the development of the suit property and therefore do not wish to continue with the suit for passing of the final decree. However, the parties herein pray to this Hon'ble Court to give them the liberty to bring a fresh suit for demarcation and division by metes and bounds of their undivided shares to the extent of 50% each in the event if need arises.”

3. In substance, the application has been filed for declaring the plaintiffs as one part and the defendant Nos.1 and 2 as the other part are having undivided share of 50% each in the property being E-552, Greater Kailash, Part-II, New Delhi.
4. That apart, they have also sought liberty that in the eventuality need arises for division of the property by metes and bounds or any other modes as prescribed and recognised in law to approach the Court at an appropriate time.
5. Noting the contents of the application, a preliminary decree of partition is passed declaring that the plaintiffs as one part has 50% undivided share and the defendant Nos.1 and 2 as other part has 50% undivided share in the suit property being E-552, Greater Kailash, Part-II, New Delhi.
6. Liberty shall be with the parties to approach the Court in the eventuality need arises for demarcation and division by metes and bounds or

any other modes as prescribed and recognised in law in respect of the suit property.

7. The decree sheet be drawn up.
8. The suit is disposed of. No costs.
9. The date fixed before Joint Registrar i.e. September 24, 2019 stands cancelled.

V. KAMESWAR RAO, J

SEPTEMBER 17, 2019/aky