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

+ **CS(OS) 1222/2006**

IQBAL SINGH AHLUWALIA Plaintiff

Through: Mr. Mohd. Amanullah, Adv.

Versus

SUDARSHAN SINGH AHLUWALIA & ANR. Defendants

Through: Mr. Samar Bansal, Adv. for D-1.

AND

TEST.CAS. 10/2011

AJIT KAUR & ANR Petitioners

Through: None.

Versus

THE STATE & OTHERS Respondents

Through: Mr. Samar Bansal, Adv. R-2.

Mr. Mohd. Amanullah, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.01.2019

1. CS(OS) No.1222/2006 has been filed for (i) declaration that the plaintiff has lawful rights in undivided half portion of the first floor of property No.B-7/1-B, Vasant Vihar, New Delhi and the Deed of Disclaimer dated 2nd November, 2001 executed by the plaintiff is a sham document; and, (ii) permanent injunction restraining the defendants from dealing with the first floor of the said property.
2. Test Cas.No.10/2011 has been filed seeking probate in respect of the document dated 27th June, 2007 stated to be the validly executed last Will of Smt. Harbachan Kaur wife of Late Daljit Singh last resident of B-7/1-B, Vasant Vihar, New Delhi.

3. The counsel for the legal representatives of defendant no.1 Sudarshan Singh Ahluwalia and the counsel for the plaintiff Iqbal Singh Ahluwalia in CS(OS) No.1222/2006, appear.
4. Consolidated issues in CS(OS) No.1222/2006 as well as in Test Cas.No.10/2011 were framed on 25th February, 2013 and save for filing of affidavits by way of examination-in-chief, recording of evidence has not commenced and the proceedings were being adjourned to enable the parties to settle the matter.
5. Besides these two proceedings, CS(OS) No.728/2006 between some of the parties to the suit was also pending consideration and vide order dated 1st May, 2015 therein, the parties therein were referred to mediation and the proceedings in this suit and in Test Cas.No.10/2011 have been adjourned from time to time on the representation that an umbrella settlement in CS(OS) No.728/2006 as well as in these two proceedings, amongst all the concerned parties, was being worked out before the Mediation Cell of this Court.
6. The order dated 9th February, 2017 in CS(OS) No.1222/2006 records the statement of the parties that the matter had been amicably settled before the Mediation Cell of this Court. To the same effect are the orders dated 13th April, 2017, 26th July, 2017, 4th August, 2017, 22nd September, 2017 and 26th October, 2017 in in CS(OS) No.1222/2006.
7. On 26th October, 2017, it was also stated by the counsel for the parties that the parties intended to file application under Order XXIII Rule 2 (supposedly incorrect for Rule 3) of the CPC.

8. On 13th December, 2017, these two proceedings were adjourned awaiting the dicta of the Full Bench of this Court as to the court fees / stamp duty on a decree for partition of sale of immovable property.

9. On the last date of hearing i.e. 4th September, 2018, it was again stated that the parties intended to make an application under Order XXIII Rule 3 of the CPC.

10. No application under Order XXIII Rule 3 of the CPC has been filed till now. However, since then, Settlement Agreement dated 21st September, 2017 purporting to bear the signature of Mr. Iqbal Singh Ahluwalia, Mr. Inderpal Ahluwalia, Mr. Manjit Singh Ahluwalia, Mrs. Jasjit K. Singh (through attorney), Dr. Mrs. Ajit Kaur Ahluwalia (through attorney), Mr. Manmohan Singh Arneja and Mr. Harmanjeet Singh as well as of Mr. M. Amanullah, Mr. Samar Bansal and Mr. P.R. Sharma, Advocates has been received from the Mediation Cell of this Court.

11. Mr. M. Amanullah, Advocate and Mr. Samar Bansal, Advocate appear and though Mr. P.R. Sharma, Advocate is not present but Mr. Manmohan Singh Arneja identified by Mr. M. Amanullah, Advocate, present in person states that Mr. Harmanjeet Singh is his son and he represents Harmanjeet Singh also. It is informed by the counsels and the said Manmohan Singh Arneja that in the Settlement Agreement, it has been agreed that the property aforesaid as well as monies invested in fixed deposits and in bank / post office accounts, particulars of which are given in Annexure-I to the Settlement Agreement, be apportioned / partitioned between the parties in the ratio as mentioned in the Settlement Agreement, but adjournments were being sought from this Court since 21st September,

2017 because the parties were been making attempts to sell property No.B-7/1-B, Vasant Vihar, New Delhi but have not been able to find a buyer for the appropriate value till now. It is stated that the Settlement Agreement is signed by all the concerned parties and the parties are to be governed thereby.

12. In the scenario aforesaid, the need to keep this suit pending is not felt. Even if parties are seeking adjournments in these proceedings to avoid payment of court fees / stamp duty on the decree for partition of sale of the property, nothing prevents the parties from, so long as they do not apply for execution of the decree sell the property on their own and distribute the sale proceeds as per the Settlement Agreement arrived at between them.

13. I have perused the Settlement / Compromise arrived at between the parties and find the same to be lawful.

14. Though CS(OS) No.1222/2006 is a suit for declaration and permanent injunction and Test.Cas. 10/2011 is a Probate case and the suit is not for partition but with the consent of the counsels/parties both proceedings are converted into a suit for partition of the estate of Late Sh. Daljit Singh and his wife Late Smt. Harbachan Kaur in accordance with the dicta of the Division Bench of this Court in ***B.S. Oberoi Vs. P.S. Oberoi*** 2013 SCC OnLine Del 616 as well as the judgments of Coordinate Bench of this Court in ***Harinder Singh Kochar Vs. State*** (2010) 173 DLT 365 and ***Ambica Mengi Vs. State*** MANU/DE/4557/2015.

15. A decree of partition of estate of Late Sh. Daljit Singh and his wife Late Smt. Harbachan Kaur as listed out in the Settlement Agreement dated 21st September, 2017 is passed, declaring the share therein of the respective parties as recorded in the Settlement Agreement.
16. A preliminary decree for partition of the said estate in terms of the Settlement Agreement dated 21st September, 2017 is hereby passed and the Settlement Agreement to form part of the decree sheet.
17. Decree sheet be prepared.
18. The estate aforesaid being indivisible by metes and bounds, as agreed in the Settlement Agreement dated 21st September, 2017, a final decree for partition of the said estate is also ordered to be passed in terms of the Settlement Agreement dated 21st September, 2017, of sale of the immovable property being property No.B-7/1-B, Vasant Vihar, New Delhi and of distribution of the monies in fixed deposits, bank accounts, post office accounts and contents of the locker as recorded in the Settlement Agreement dated 21st September, 2017, leaving the parties to bear their own costs.
19. Final decree for partition be drawn up with the Settlement Agreement dated 21st September, 2017 forming part thereof.
20. However, the parties having agreed to amicably sell the property and having opted not to have the final decree for partition drawn up, it is further ordered that whenever any of the parties applies for execution, the stamp duty payable on the final decree for partition shall be the first charge on the sale proceeds of property No.B-7/1-B, Vasant Vihar, New Delhi and the stamp duty shall not be recoverable from the parties in accordance with the shares of the parties in the said property and if none of the parties applies for

execution of the final decree for partition, the stamp duty / court fees shall not be recoverable.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 18, 2019

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