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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 207/2018 & IA No.6087/2018 (u/O XXXIX R-1&2 CPC)**
ARUN KUMAR GUPTA Plaintiff

Through: Mr. Sunny Arora, Adv.

Versus

AMIT GUPTA & ORS Defendants

Through: Mr. Naveen Kumar, Adv. along with
D-1 in person.

Mr. Harshit Gupta, Adv. for D-2 to 4
along with D-2&4 in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.03.2019

1. This order is in continuation of the order dated 28th February, 2019.
2. Mr. Naveen Kumar, Advocate for the defendant no.1 along with defendant no.1 Amit Gupta appears and has handed over in the Court the original Relinquishment Deed dated 25th May, 2007 executed by Smt. Gianeshwari Gupta in favour of defendant no.1 with respect to her 1/7th share in property bearing No.A-229, Surajmal Vihar, Delhi.
3. The photocopy of the said Relinquishment Deed has been taken and kept on record.
4. The Relinquishment Deed has also been shown to the counsel for the plaintiff and to the counsel for defendants no.2 to 4 and they are satisfied that the said Relinquishment Deed bears the photograph of Smt. Gianeshwari Gupta and is executed by her.
5. Original Relinquishment Deed is returned to the defendant no.1.

6. The counsel for the plaintiff and the counsel for the defendants no.2 to 4, under instructions state that they are agreeable to the plaintiff and defendants no.2 to 5 getting $1/7^{\text{th}}$ share each in the property aforesaid and the defendant no.1 getting $2/7^{\text{th}}$ share in the property.
7. The counsel for the defendant no.1 states that the defendant no.1 has spent some monies on the aforesaid property. However, upon being told that since the defendant no.1 is exclusively enjoying the property, the claim for *mesne profits* against the defendant no.1 will also be gone into, does not press the said aspect.
8. Resultantly, a preliminary decree for partition of property bearing No.A-229, Surajmal Vihar, Delhi is passed, declaring the plaintiff Arun Kumar Gupta and defendants no.2 to 5 viz. Smt. Veena Rani Gupta, Smt. Manju Chand, Smt. Sunita Gupta and Sh. Anil Mittal to be having $1/7^{\text{th}}$ share each therein and the defendant no.1 Amit Gupta to be having the remaining $2/7^{\text{th}}$ share therein.
9. Preliminary decree for partition be drawn up.
10. Considering that the property is constructed over land ad-measuring 200 sq. yds. and comprises of ground floor only having three bed rooms, the counsels agree that there is no possibility of the same being partitioned by metes and bounds and a final decree for partition of sale of the property and distribution of sale proceeds has to be passed.
11. A final decree for partition of property bearing No.A-229, Surajmal Vihar, Delhi also thus is passed, of sale thereof and of distribution of sale proceeds between the parties as per their shares declared in the preliminary

decree for partition. It is however ordered that the parties, before selling the property to an outsider, would make an endeavour to make *inter se* bidding, with the party offering the highest price buying the share of others against execution of documents of transfer. It is however clarified that unless the needful in this regard is done within two months herefrom, either party shall be entitled to apply for execution of the final decree for partition.

12. The defendant no.1 states that the original Sale Deed in favour of the father of the parties with respect to the property, is in possession of the defendant no.1. The defendant no.1 is bound down to handover the said original Sale Deed to the buyer. Further, if the defendant no.1 does not vacate the property and handover possession thereof to the buyer, shall be liable to be ejected therefrom as if in a decree for possession of immovable property.

13. It is further clarified that the stamp duty to be paid on the decree sheet shall also be borne by the parties in the ratio of their respective share in the property and the stamp duty of the share of the defaulting party, paid by another shareholder, with interest at 11% per annum thereon shall be deducted from the sale proceeds of his / her share in the property.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 12, 2019

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