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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 544/2018
JAYANT KUMAR BISHT Plaintiff
Through Mr.Mohit Nandwani, Adv.

versus

DHANANJAY BISHT & ANR. Defendants
Through Mrs.Shalini Dhingra and Mr.Pradeep
Dhingra, Advs. for D-2

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **20.03.2019**

The learned counsel appearing for defendant No.2 states that defendant No.2 is supporting the case of the plaintiff and she does not wish to file written statement.

The present suit is filed for partition, declaration and permanent and mandatory injunction of property bearing Flat 2C, Second Floor, Vandhana Building, 11 Tolstoy Marg, New Delhi -110001.

It is the case of the plaintiff that defendants are the co-owners of the property being the legal heirs/children of late Smt.Ratna Kumari Bisht (mother of the parties). Smt.Ratna Kumari Bisht died intestate on 16.09.1999.

A perusal of the plaint would show that Smt.Ratna Kumari Bisht is survived by the plaintiff, defendant No.1 and one deceased son Sanjay Kumar Bisht now represented by his daughter- defendant No.2 and step-son Sh.Surendra Singh Bisht. Sh.Surendra Singh Bisht has separately stated that he has no right title or interest in the suit property in terms of the settlement

with his father. He also earlier filed an affidavit on 08.05.2011 and now on 13.09.2018 that he has no right, title or interest in the suit property.

Defendant No.1 was served on 03.11.2018. Despite lapse of more than 90 days, no written statement has been filed. Today also, none has appeared for defendant No.1.

Accordingly, a preliminary decree of partition is passed in favour of the plaintiff and against the defendants holding the share of each party as $\frac{1}{3}^{\text{rd}}$ in the suit property.

The learned counsel for the parties state that it is not possible to partition of the suit property as it is 928 sq.fts. (approx.) in commercial area. The property would have to be sold by auction.

Accordingly, a decree of partition is passed for sale of the suit property and the sale proceeds will be divided between the parties as per above noted share.

Suit and all pending applications, if any, stand disposed of.

JAYANT NATH, J.

MARCH 20, 2019/v