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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 573/2018 & IAs No.3451/2019 (u/O XXIII R-3 CPC) & 3452/2019 (of D-1&2 u/O XXXII R-7 CPC)**
RIPU DAMAN SALLY Plaintiff

Through: Mr. Naresh Thanai, Adv. with
plaintiff in person.

Versus

SUNIL SALLY & ORS. Defendants

Through: Mr. Rajesh Mahajan, Adv. for D-
1&2 with D-1 & D-2 in person.
Mr. Jitendra Kumar, husband of D-4
in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.03.2019

1. The plaintiff has instituted this suit against her son and three daughters for partition, of property No.24/51, West Punjabi Bagh, New Delhi comprising of basement floor, stilt floor at the ground level and first, second, third and fourth floors constructed thereover.

2. The counsel for the plaintiff states (i) that the property aforesaid belonged to the husband of the plaintiff and the father of the four defendants, who died intestate leaving the plaintiff and the four defendants as his only heirs; (ii) that the husband of the plaintiff, in his lifetime had entered into an agreement with a builder for re-construction and re-development of the property, then comprising of ground floor only; however the work of re-construction was completed, after the demise of the husband of the plaintiff; (iii) that in accordance with the agreement with the builder/developer, the third floor aforesaid of the building (described in

development agreement as well as in the sale deed as 'second floor') was to be transferred to the builder/developer or at his instance; (iv) that the defendant No.1, being the only son of the plaintiff, is mentally handicapped and is not capable of earning his livelihood and dependent on others for whole life and is now 61 years of age and is unmarried and without any children and is looked after by the plaintiff and the defendant No.2 Ms. Honey Sally who though now 49 years of age has not married to look after her brother i.e. defendant No.1; (v) that the defendants No.2 to 4, being the daughters of the plaintiff and sister of defendant no.1, otherwise have relinquished their 20% share each in the property in favour of the plaintiff, making the plaintiff owner of 80% share and the defendant No.1 the owner of 20% share, in the property; (vi) that for the purpose of executing the sale deed with respect to the third floor (described as second floor in the development agreement) in favour of the builder/at his instance, permission was sought from the District Judge, for sale of 20% share of the defendant No.1 therein and such permission was granted vide order dated 21st July, 2011 in MHA No.02/2010 (Unique ID No.02401C0248802010) of the Court of District Judge & ASJ-In-Charge (West), Delhi and in pursuance thereto, the third floor of the property (described as second floor in the document), has been sold in favour of / at the instance of the builder / developer; (vii) that thus the plaintiff and the defendant No.1 are now the co-owners in ratio of 80:20, of the basement floor, stilt floor (save for rights assigned to builder/developer at his instance), first floor, second floor and fourth floor with terrace rights above the property; (viii) that the plaintiff and defendant no.1 are required to sell another floor of the property for their day to day

needs, instead of again approaching the District Judge for permission to sell on behalf of the defendant No.1, the plaintiff has deemed it appropriate to have her 80% share in the property partitioned, so that the floor in exclusive ownership of the plaintiff can be sold; (ix) that in fact under the Mental Health Care Act, 2017 which repeals the earlier Mental Health Act, 1987, there is no provision for grant of such permission.

3. The suit was entertained and summons thereof ordered to be issued and the order dated 21st January, 2019 records that defendants No.2 to 4 had filed their affidavit stating that they have no objection, if the property is partitioned between the plaintiff and the defendant No.1 and disclaiming any right or share in the property. The said order dated 21st January, 2019 also appoints the defendant No.2 Ms. Honey Sally as the guardian of the defendant No.1 for the purpose of the present suit.

4. IA No.3451/2019 has been filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff and the defendant No.1 acting through the defendant No.2 and IA No.3452/2019 has been filed by the defendant No.2 seeking permission of this Court to enter into compromise on behalf of the defendant No.1.

5. The plaintiff, defendant No.1, defendant No.2 and husband Mr. Jitender Kumar, of the defendant No.4 as identified by the counsel for the plaintiff, are present in Court and the plaintiff, defendant No.2 and Mr. Jitender Kumar, husband of the defendant No.4 support the aforesaid applications.

6. I have perused the compromise arrived at between the plaintiff and the defendant No.1 acting through the defendant No.2 compromise. Thereunder, the top floor i.e. the fourth floor of the property (described in

the other documents aforesaid as third floor) along with one car parking space on the stilt floor has fallen to the share of the defendant No.1 in lieu of his 20% share in the property and the entire basement, remaining stilt floor except rights given to the occupier of floor sold to / at the instance of the builder / developer, first floor, second floor and open terrace above the fourth floor have fallen to the share of the plaintiff in lieu of her 80% share in the property. The counsel for the plaintiff has also stated that if this Court, in the interest of the defendant No.1, feels the defendant No.1 entitled to any larger share than proposed, the plaintiff who is none other than the mother of the defendant No.1 has no objection thereto.

7. I have also made enquiries from the defendant No.1 and defendant No.2 present in the Court and I am satisfied that the compromise proposed by the defendant No.2 as guardian of the defendant No.1 is in the interest of the defendant No.1 and for the benefit of the defendant No.1.

8. IA No.3452/2019 is thus allowed and the defendant No.2 is granted permission to enter into compromise on behalf of the defendant No.1.

9. Considering all the facts and circumstances and having interacted with the defendant No.1 and defendant No.2, I am satisfied that the compromise as contained in IA No.3451/2019 is lawful and allow the same.

10. A decree of partition by metes and bounds of property No.24/51, West Punjabi Bagh, New Delhi is passed in terms of IA No.3451/2019 which shall form part of the decree sheet, leaving the parties to bear their own costs.

11. Subject to the payment of stamp duty, decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 08, 2019/‘bs’..
CS(OS) 573/2018