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

+ **CS(OS) 6/2018 & IA No.304/2018 (u/O XXXIX R-1&2 CPC)**

MEENAKSHI OBERG Plaintiff

Through: Mr. Sandeep Bhalla, Ms. Isha Bhalla
& Mr. Alok Singh, Advs.

Versus

BRIJESH SINGH CHAUHAN Defendant

Through: Ms. Monika Shahi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.01.2019**

1. This suit is ripe for framing of issues.
2. The counsel for the plaintiff and the counsel for the defendant have been heard.
3. The counsel for the plaintiff states that (i) the plaintiff has instituted this suit for partition of property No.W Lane 20, 501/21B, Sainik Farms, New Delhi out of Khasra No.50/22 of Village Deoli, Delhi; (ii) the plaintiff and the defendant are sister and brother; (iii) the property admeasures one bigha; (iv) the plaintiff and the defendant jointly purchased the aforesaid property through the medium of Agreement to Sell, Power of Attorney, Receipt etc and all of which documents are in the joint name of the parties; (v) the defendant in his written statement has not disputed the said facts but has claimed that the defendant had loaned a sum of Rs.46,46,175/- to the plaintiff and which the plaintiff was unable to pay and in lieu thereof had agreed to transfer her 50% share in the property to the defendant; (vi) though the

plaintiff does not admit the said pleas of the defendant but the said pleas in any case do not raise any substantial issue of fact or law insofar as the present suit for partition is concerned inasmuch as even if the said pleas are to be believed, the remedy of the defendant is to sue for specific performance of the alleged Agreement to Sell and which has not been done and the said pleas are thus not an impediment to a preliminary decree for partition being passed.

4. Ms. Monika Shahi, Advocate for the defendant states that the defendant does not dispute the joint ownership of the parties or the equal share of the parties.

5. I may state that the same stands admitted in the written statement of the defendant claiming an agreement by the plaintiff of transfer thereof to the defendant.

6. Ms. Monika Shahi, Advocate for the defendant states that the defendant, with his own monies has raised construction on one half of the property and the other half of the property without any construction is of the plaintiff.

7. On being asked to show the pleading to the said effect, attention is drawn to para no.2 of the preliminary submissions in the written statement and to page 48 of Part-I file being a site plan of the property filed by the defendant along with the written statement showing in a shaded colour the half of the property which the defendant claims to be his and in white the other half of the property claimed to be of the plaintiff.

8. I may state that the plea in the written statement is not of the property having been partitioned between the parties.

9. I have enquired from the counsel for the defendant, whether the two portions are equal.
10. The counsel for the defendant replies in the affirmative.
11. I have enquired from the counsel for the plaintiff, whether the plaintiff is willing to accept the aforesaid partition.
12. The counsel for the plaintiff controverts that the defendant has raised any construction. He further draws attention to the fact that in Sainik Farms New Delhi, there is a prohibition against construction and contends that the defendant could not possibly have raised any construction and the property is in the same state in which it was at the time of the acquisition by the parties.
13. The defendant in his written statement has not given any particulars of the date when the construction is claimed to have been raised.
14. The counsel for the plaintiff further states that the plaintiff is unwilling to take the half portion of the property without any construction, since the plaintiff also in accordance with the prohibition aforesaid would be unable to make any construction.
15. The counsel for the defendant, though has also contended that if the suit is decreed, the defendant will be left without the money loaned to the plaintiff and will also be deprived of plaintiff's half of the property, but is unable to justify the said position in law.
16. Merit is found in the contention of the counsel for the plaintiff, that the pleas of the defendant do not raise any issue.
17. In a suit for partition, where the shares are admitted, a plea of an agreement of sale by one of his share in the property to the other, is not

required to be adjudicated. Reference in this regard may be made to ***Jagan Nath Vs. Mahinder Kaur*** 1996 (36) DRJ 108. Moreover, no claim also, for adjudication thereof has been made by way of a counterclaim.

18. I am therefore satisfied, that no issues arise and the plaintiff, on the basis of admissions contained in the written statement of the defendant and on the basis of admission of the documents of the plaintiff, is entitled to a preliminary decree for partition forthwith.

19. A preliminary decree for partition is accordingly passed, of property No.W Lane 20, 501/21B, Sainik Farms, New Delhi, declaring the plaintiff and the defendant to be owner of one half equal share each therein.

20. Decree sheet be prepared.

21. Both counsels agree that in the facts aforesaid, the property is indivisible by metes and bounds and state that a final decree for partition of sale of the property and distribution of sale proceeds thereof as per the shares declared in the preliminary decree for partition with right to the parties to bid for each other's share be passed.

22. It being admitted that property is indivisible by metes and bounds, there is no option but to pass a final decree for partition of sale.

23. A final decree for partition of sale of the property and distribution of sale proceeds as per shares declared in the preliminary decree for partition of property No.W Lane 20, 501/21B, Sainik Farms, New Delhi is accordingly passed, with a further stipulation that before the property aforesaid being put to sale to others, the parties shall be entitled to make *inter se* bids, with the party making the highest bid acquiring the share of the other along with vacant, peaceful, physical possession of the entire property against execution

of transfer documents.

24. The parties are left to bear their own costs.

25. Decree sheet be drawn up. The parties to equally bear the cost of court fee/stamp duty on the decree.

Dasti.

RAJIV SAHAI ENDLAW, J

JANUARY 15, 2019

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