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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2051/2012, IAs 12659/2012, 10812/2019 & 862/2020
DINESH SAREEN & ANR Plaintiffs
Through: Ms.Meena Kohli, Adv. with plaintiffs
in person

versus

NAVIN SAREEN & ORS Defendants
Through: Mr.Pankaj Gupta and Mr.Brijesh
Bagga, Advs. for LR's of D-6
Mr.Gurkamal Hora Arora, Adv. for
D-7

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **06.02.2020**

I.A. 10812/2019

1. This is an application filed by the LR's of defendant No.6 with the following prayers:

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to waive of the burden of payment of 25% of the Fee of the Court Commissioner by the applicant and her two sons, who are legal heirs of late Ramesh Chander Sareen, the deceased defendant No.6.

Pass such other and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances.”

2. The application is not pressed. Learned counsel for LR's of defendant No.6 states that the share of the Court Commissioner fees shall be paid within four weeks from today. The statement is taken on record.

3. The application is dismissed as not pressed.

CS(OS) 2051/2012

4. This suit was filed with the following the prayers:

“i) Pass a decree of partition in the respect of the suit property No A/33, Vishal Enclave, Najafgarh Road, New Delhi built on land admeasuring 334.45 Sq Meters in metes and bond as shown in the site plan.

ii) Pass a decree of permanent injunction in favour of Plaintiffs and against the defendant No.1 to 6 thereby restraining the Defendants, their agents, assign, nominee etc from disposing off, alienating, transferring or parting with the possession of the suit property bearing no A/33, Vishal Enclave, Nazafgarh Road, New Delhi.

iii) Pass any other or further order as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interest of justice may also be passed.

iv) Cost of the suit may please to award to the Plaintiff and against the Defendants.”

5. On March 08, 2016 a preliminary decree was passed by this Court, para 7 thereof reads as under:

“xxx xxx xxx
7. Accordingly, a preliminary decree is passed giving 1/4th /25% co-ownership rights in the suit property to the two plaintiffs jointly. 50%/half co-ownership rights in the suit property will fall to Sh. Navneet Singh and 1/4th /25% ownership rights in the suit property will fall to defendant no.6 Sh. Ramesh Chander Sareen. A preliminary decree be drawn up accordingly.”

6. Vide order dated April 25, 2018, this Court had appointed Ms.Sukhbeer Kour Bajwa as a Local Commissioner to report the mode of

the partition of the property, after getting site plan as per the site and scale prepared of the property.

7. It appears that the Local Commissioner had visited the property in question on May 20, 2018 and a report thereof was filed by Ms.Bajwa on May 21, 2018. It appears that, because of the non-cooperation of the parties, the commission could not be executed on May 20, 2018.

8. In any case, vide order April 24, 2019, this Court has directed the Local Commissioner to visit the property in question on July 19, 2019 at 4.00 pm. Pursuant thereto, the Local Commissioner had visited the premises and filed a further report on August 07, 2019. She has recorded that the parties have provided her a photocopy of the site plan. She has also recorded the consent given by the plaintiffs, LR's of defendant No.6 and learned counsel for the defendant Nos.7 in the following manner:

“ Both the plaintiff together have agreed to take 10 feet breadth front side and 90 feet length area of the building, LR's of the Defendant No. 6 together have agreed to take 10 feet breadth front side and 90 feet length area of the building and Defendant No. 7 also agreed to take 20 feet breadth front side and 90 feet length area of the building. ” Photocopy of the site plan is enclosed herewith as Annexure P-2.

9. She also noted that a draftsman has prepared the spot map of the building. She further stated the following:

“Drafts-man prepared the spot map of the building. The Plaintiff No. 1 and Plaintiff No. 2 opted (10 feet breadth and 90 feet length side of the building) LR's of the Defendant No. 6 opted (10 feet breadth and 90 feet length side of the building) from the plot No. towards / adjoining No. A32 side and Defendant No.7 opted the (20 feet breadth and 90 feet length side of the building) from the plot No. towards / adjoining A-34 side.” N. Copy of the spot map prepared by the draft man is

enclosed herewith As annexure P-3 Page. Copies of the spot proceedings are enclosed herewith As Annexure (Colly) P-4.

10. The Local Commissioner has also annexed certain other documents.
11. Today learned counsel for the plaintiffs, learned counsel for the LRs of defendant No.6 and learned counsel for defendant No.7 have unequivocally state that they accept the report as given by the Local Commissioner and the final decree be passed in terms of the report (with Annexures) of the Local Commissioner filed on August 07, 2019.
12. The statements made by the learned counsels for the parties are taken on record and a final decree is passed in terms of the report of the Local Commissioner (along with Annexures) filed on August 07, 2019.
13. Decree sheet be drawn up accordingly.
14. I take on record the submission made by the learned counsels for the plaintiffs, LR's of defendant No.6 and defendant No.7 that their clients shall construct the partition walls in the property in question within two months from today.

Dasti.

V. KAMESWAR RAO, J

FEBRUARY 06, 2020/bh