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

\+ CS(OS) 356/2018, IA No.9679/2018(u/O.XXXIX R-1&2 CPC), IA No.9680/2018(u/S.151 CPC) & IA No.13754/2019(u/S.151 CPC)

AMRITA VASWANI ..... Plaintiff

Through: Mr. Aashish Gupta with Mr. Aditya Mukherjee, Mr. Rakshit Akshay Jha & Ms. Sadhika Gulati, Advs.

versus

GULAB N. VASWANI HUF & ORS. ..... Defendants

Through: Mr. Arjun Mahajan with Ms. Aditi Tomar, Advs. for D-1-4 & 6.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **27.01.2020**

1. This order is in continuation of the order dated 23rd January, 2020.

2. The counsel for the defendants no. 1 to 4 and 6 has fairly consented that the shares of the parties would be in terms of paragraph 6 of the order dated 23rd January 2020.

3. The counsel for the plaintiff states that the plaintiff, for the sake of expeditious disposal and settlement, is giving up the claim against the defendant no.2 of siphoning off of jewellery.

4. The counsel for the plaintiff and the counsel for the contesting defendants no. 1 to 4 and 6 state that there is no dispute as to what are the assets and liabilities of the HUF and thus the same as listed at page 47 of Part I File, being the internal page 4 of the written statement of the contesting defendants, may be seen.

5. A perusal thereof shows a loan to defendant no.5 Mrs. Vineeta G. Vaswani of Rs.2 crores as asset of the HUF.

6. I have enquired from the counsel for the parties, how in the absence of defendant no.5 Ms. Vineeta G. Vaswani, a preliminary decree for partition with respect thereto can be passed and even if the defendant no.5 is *ex parte*, whether evidence in this context has to be led.

7. The counsel for the plaintiff states that the defendant no.5 Vineeta G. Vaswani is present in person in the Court.

8. Both, the counsel for the plaintiff and the counsel for the defendants no. 1 to 4 and 6, identify Mrs. Vineeta G. Vaswani stated to be present in Court along with the plaintiff.

9. I have enquired from the defendant no. 5 Mrs. Vineeta G. Vaswani, whether she is able to understand and speak Hindi or English language and she states that she is able to understand both the languages.

10. I have explained to her in Hindi language, the nature of the present suit as well as the assets of Gulab N. Vaswani HUF of which partition is being sought and particularly the loan shown to her of Rs.2 crores and she has confirmed the same.

11. At this stage, the counsel for the plaintiff states that no documents of liability of Rs.60 lakhs as shown, have been filed by the defendants no. 1 to 4 and 6.

12. The counsel for the defendants no. 1 to 4 and 6 states that an income tax case is pending in Lucknow and the decree holder can verify about the

same and the particulars of the Advocate/practitioner contesting the said demand on behalf of Gulab N. Vaswani HUF shall be furnished to the counsel for the plaintiff in writing against acknowledgment within one week hereof.

13. Accordingly, a preliminary decree for partition of the following assets, less liability of income tax demand of about Rs.60 lakhs against Gulab N. Vaswani, is passed :

1.	Property at Kanpur Road, Lucknow
2.	Property at GK-1, Delhi
3.	Bank of Baroda Account no.47030100004181
4.	Bank of Baroda Account no. 47030100004519
5.	Indusind bank
6.	Interest on Investments
7.	Loan to Mrs. Vineeta G Vaswani

declaring the plaintiff Amrita Vaswani, defendant no.2 Vishal Vaswani and defendant no.5 Vineeeta G Vaswani to be having one-third undivided share therein with the defendant no.3 Rayansh Vaswani and defendant no.6 Eva Vaswani to be having one-third share out of the share of their father Vishal Vaswani in the said HUF and with defendant no.4 Shikha Vaswani having no share whatsoever therein.

14. Preliminary decree for partition be drawn up.

15. The counsels, on enquiry state that both Greater Kailash property and the Lucknow property are lying vacant.

16. The counsel for the defendants no. 1 to 4 and 6 states that IA No.13754/2019 with respect to expenses incurred for maintenance of HUF properties is pending and the total expenses are in the sum of Rs.6,14,000/-.

17. The counsel for the decree holder states that out of the said amount, Rs.3 lakhs odd is towards legal expenses incurred in contesting the present suit.

18. It goes without need to give any reason, that the same cannot be claimed as expenses out of the assets of HUF.

19. The other heads of expenses also are without any proof. Thus it is ordered that only the electricity charges and house tax paid for the two immovable properties shall be permitted to be deducted from the estate, towards expenses of the two properties and that too against furnishing of bills and receipts of payment.

20. The modalities of final decree for partition have been debated. While the counsel for the plaintiff has contended that valuation of the Greater Kailash property is Rs.3.43 crores, according to the counsel for the defendants no. 1 to 4 and 6 it is Rs.3,27,14,476/- only and the counsel for the defendants no. 1 to 4 and 6 states that the plaintiff may take the Greater Kailash property at the said valuation.

21. The counsel for the plaintiff is agreeable to that.

22. The counsels state that the immovable properties at Lucknow and B-243, Ground Floor, Greater Kailash-I, New Delhi be sold, with option for *inter se* bidding and the sale proceeds to be divided between the parties, and the monies in the bank accounts and investments be permitted to be also divided in accordance with the shares declared in the preliminary decree for

partition. It is further stated that out of the total kitty, the liability towards income tax, if not settled till then, be permitted to remain deposited in one of the bank accounts in the name of Gulab N. Vaswani HUF.

23. A final decree for partition of the following properties of Gulab N. Vaswani HUF:

(a) B-243, Ground Floor, Greater Kailash-I, New Delhi; and,

(b) Property at Kanpur Road, Lucknow

is thus passed, of sale thereof and distribution of sale proceeds between the parties as per shares declared in the preliminary decree for partition, with option to the parties to, before sale to outsiders, make *inter se* bidding, with the party/parties bidding the highest, acquiring share(s) of other(s) therein against payment of sale consideration and delivery of vacant, peaceful possession and execution of requisite documents.

24. A final decree for partition of the monies lying in the bank accounts of Gulab N. Vaswani HUF at Serial numbers 3, 4, 5 and 6 above, is passed, of distribution thereof in accordance with the share of the parties, with the loan amount of Rs.2 crores to defendant no.5 Mrs. Vineeta G. Vaswani being adjusted out of her share in the HUF.

25. Out of the total sale proceed/monies in the bank accounts, a sum of Rs.60 lakhs or such other amount as is demanded by the income tax, if not settled till then, be retained in a bank account either in the name of Gulab N. Vaswani HUF or in the joint names of plaintiff and defendant no.2 and defendant no.5.

26. Final decree for partition be drawn up.

27. The stamp duty on the final decree for partition to be borne by the parties in accordance with the shares in the preliminary decree for partition.

RAJIV SAHAI ENDLAW, J

JANUARY 27, 2020
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