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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 389/2017

SHRI ANUP KHANNA

..... Plaintiff

Represented by: Ms. Nandni Sahni, Adv. with plaintiff
in person.

versus

SHRI RAJAT KHANNA @ ROGER KHANNA & ANR

..... Defendant

Represented by: Ms. Samvartika Pathak, Adv.

+ CS(OS) 593/2018

SHRI RAJAT KHANNA @ ROGER KHANNA

..... Plaintiff

Represented by: Ms. Samvartika Pathak, Adv.

versus

SHRI ANUP KHANNA

..... Defendant

Represented by: Ms. Nandni Sahni, Adv.

+ TEST.CAS. 57/2018

SHRI RAJAT KHANNA

..... Petitioner

Represented by: Ms. Samvartika Pathak, Adv.

versus

STATE & ANR.

..... Respondent

Represented by: Ms. Nandni Sahni, Adv. for R-2 with
R-2/ Mr. Anup Khanna in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

31.01.2020

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1. CS(OS) 389/2017 was filed seeking a decree of declaration, cancellation and injunction by Anup Khanna whereas CS(OS) 593/2018 was filed by Roger Khanna seeking a decree of partition besides TEST.CAS.

57/2018 seeking probate of the Will of the mother of the parties i.e. late Smt. Krishna Kumari Khanna.

2. The two parties being thus siblings have now settled the disputes before the Delhi High Court Mediation and Conciliation Centre. Copy of the settlement agreement dated 20th January, 2020 has been placed on record.

3. The parties have settled the suits and testamentary case on the following terms and conditions:

1. *"It was mutually agreed and decided that the Seventy Five Percent (approximately) undivided share in Flat at Mumbai bearing No.1203 on the 12th floor, Andalucia Wing-A, situated at Village Erangal, Madh, Mumbai-400061 would be the SOLE PROPERTY of the FIRST PARTY. Since the First Party owns the other Twenty Five Percent Share therein, he shall become the SOLE, EXCLUSIVE and ABSOLUTE OWNER in perpetuity thereof. A Declaration cum Indemnity Deed was executed by Second Party in favour of First Party on a Stamp Paper (of INR VALUE 300/-) Duly Notarised and Submitted to BUILDER RAHEJAS in MUMBAI on 29.05.2011 by Second Party in Person. It was agreed that the Second Party would execute whatever deeds or documents that are required anytime in future for completing the said arrangement if so required making the first party as the exclusive and absolute owner of the same and who shall have an absolute right to deal with the same as owner in perpetuity.*
2. *The FIRST PARTY would be the SOLE, EXCLUSIVE and ABSOLUTE OWNER of the entire GROUND FLOOR and the PART BASEMENT of PROPERTY No.E-1, LAJPAT NAGAR-III, NEW DELHI-110024 and who shall have an absolute right to deal with the same as owner in perpetuity.*

Site plan map of ground floor and part basement fallen to the share of first party shown in BLUE Colour enclosed herewith as Exhibit - C.

3. That the SECOND PARTY would be the SOLE, EXCLUSIVE and ABSOLUTE OWNER of the entire FIRST FLOOR of the said Property No. E-1, Lajpat Nagar – III, New Delhi-110024 shall have an absolute right to deal with the same as an owner in perpetuity.

Site plan of the first floor fallen to the share of second party shown in GREEN Colour enclosed herewith as Exhibit - C. That the first floor of the said Property No. E-1, Lajpat Nagar – III, New Delhi is presently in unauthorized and illegal occupation of Defaultee Licensee namely Smt. Drishti Naresh Chandani, (Director Disposafe Health Care Pvt. Ltd.) hereinafter referred to as Defaultee Licensee. That her leave & license period has already expired and terminated on 31st July, 2019. That as mutually decided the FIRST PARTY has already filed a suit for Ejectment & Possession against the said Defaultee LICENSEE. FIRST PARTY undertakes to bear the initial expenses in the litigation against the said Licensee. The Second Party undertakes to support the First Party in the Ejectment Litigation in all respects (affidavit in support of the same is exhibited as Exhibit - D) in Evicting the Defaultee Licensee and the second party may join as a party or instruct his counsel to represent him in the said litigation as and when required and also undertakes not to lease, sell, mortgage or create any interest in favour of the said defaultee licensee namely Smt. Drishti Naresh Chandani or her family or legal representative or her company in any manner whatsoever. Thereafter the second party may lease the premises to any other party he deems fit. That the first party reserves the right to receive only the six months arrears of rent w.e.f August 2019 to January 2020 i.e. upto the date of the settlement decree which would be passed by the Hon'ble Court in respect of the Ejectment Case filed against the Defaultee Licensee and thereafter the second party will be entitled to all the arrears of rent w.e.f. February 2020 upto the date of eviction.

4. That both the parties shall have 50% Roof Terrace Rights situated above 2nd floor in the said Property No. E-1, Lajpat Nagar – III, New Delhi. The portions of the roof have been demarcated which are reflected in the site plan attached with the present Settlement Agreement. That the BLUE PORTION

shown in the site plan shall belong to FIRST PARTY and the green portion shall belong to SECOND PARTY. Second party undertakes that 50% share on terrace will not be clubbed with the share of first floor to tenants or any third party for use and meant only for exclusive use of families of both the parties and no other. Terrace shall remain locked and one key kept with both the parties. That either party reserves the right to construct their respective portions as they deem fit (with due diligence and only if permissible by law and providing reasonable advance written intimation) without any interference from either party after taking necessary permissions from all regulatory authorities and in compliance of all local and applicable laws, jurisdictions & ordinances making separate entry doors, separate water, electricity and Indraprastha Gas Ltd. (piped cooking gas) connections to their respective portions in the terrace.

5. That the FIRST PARTY shall pay a sum of Rs.15,00,000 (Fifteen lakhs) to the SECOND PARTY as FULL AND FINAL SETTLEMENT of all the dues of the rent up to date of settlement decree as well as towards the consideration for reaching the present settlement in relation to all the other assets which are the subject matter of the present Settlement Agreement payable in three installments' with post dated cheques payable at the time of acceptance of the settlement and decree order passed by the Hon'ble Court: Rs 100,000 (one lakh) of the settlement amount within 15(fifteen) days from the date of acceptance of the settlement decree vide post dated cheque no. 066847 dated 15.02.2020 drawn on Union Bank, Lajpat Nagar, New Delhi; 50% [Rs.700,000/- (seven lakhs) vide post dated cheque no.066848 dated 15.05.2020 drawn on Union Bank, Lajpat Nagar, New Delhi] of the balance amount within next 90 days and the balance 50% [Rs.700,000/- (seven lakhs) vide post dated cheque no. 066849 dated 15.08.2020 drawn on Union Bank, Lajpat Nagar, New Delhi] amount shall be paid within the next 90 days. The counsel for the second party will issue receipts in favour of the aforementioned cheques subject to its encashment. If the payment is made prior to 90 days, the said cheque shall be returned to the first party at the time of receiving the payment. The funds will be paid to the second party by depositing the

same in his Union bank of India (UBI), NRO Account within the agreed timeframe or by any other mode.

That if the cheques are dishonoured the second party reserves the right to recover the said amount through execution as well as will have a right to take criminal proceedings under section 138 of Negotiable Instruments Act. The party which fails to comply with any of the terms of this Settlement Agreement shall be liable for contempt and the aggrieved party reserves the right to file a contempt against the defaulting other party.

6. Both parties will pay the Property Taxes in respect of their respective portions and get MUTATION of their respective Shares done in their name along with the change in the name of all Utility Services respectively. The first party has attached the last property tax receipt showing payment of Tax as Exhibit-E to this settlement agreement.
7. It is mutually agreed that the LOCKER No. 1803-B at Delhi Safe Deposit, 86 Janpath, presently in the name of mother and both the parties shall stand in the name of FIRST PARTY alone who shall pay its annual rent thereafter as he has been doing since demise of the mother in 2011. And in this regard, NOC would be provided by the second party if required.
8. No other Demand and litigation in respect of the aforementioned three suits mentioned here in above whatsoever, shall be raised by either Party including their legal heir, successors-in-interest, Assignees, Nominees, Administrators etc. after signing of this Settlement Agreement. This Settlement Agreement shall be Final, binding in all respects and Irrevocable by both the parties. All the three cases bearing no. CS/OS 389/2017, CS(OS) 593/18 and Test Case No.57/18 shall stand settled and shall be disposed off in terms of the present Settlement Agreement on signing of this Settlement Agreement and parties will obtain decree in terms of the present Settlement Agreement.
9. That the parties have decided to divide/partition the entire estate of their mother late Smt. Krishna kumari Khanna in terms of this Settlement Agreement.

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10. *It is agreed between both the parties that they will not create any third party interest, sell, gift their respective shares without the written consent of the other party and in case if any party has to do so the same shall be offered to the other party first at the prevailing market rate at that point of time and only after the written refusal shall proceed further with any third party. Thereby preserving the "first right of refusal" equally in favour of both the parties.*
 11. *In order to maintain the common areas and facade of the Property full co-operation will be extended by both the parties for its repairs, upkeep and share the costs thus incurred after obtaining written CONSENT from each other. Second party reserves the right to have an independent/ neutral third party to audit all such aforementioned repairs and subsequent costs and expenses that may be incurred for their legitimacy, validity and authenticity at his own costs through his reliable sources. Second Party may deal with the repairing Vendor directly in respect of his share portions and payment liabilities without causing any undue hindrances or delays. Second Party undertakes to inform the First Party of any change of address or contact details in the future and vice-a-versa.*
 12. *Storage of bicycles, pets or any other item causing obstruction under the common stair case or near the electricity meter boards prohibited to all the parties.*
 13. *That the parties are entitled to receive back the refund of court fees paid by them as per mediation rules.*
 14. *That the parties shall pay the respective stamp duty/court fees on their share if required on the Decree passed by the Hon'ble Court on acceptance of this settlement.*
 15. *That the present Settlement Agreement has been entered into in good faith without any force, coercion, undue influence or suppression of material facts or misrepresentation."*
4. Besides the settlement agreement also encloses the five exhibits, Ex. 'A' being the special power of attorney by Roger Khanna @ Rajat Khanna

in favour of Shri Vimal Dhawan, Ex. 'B' being the affidavit of Shri Vimal Dhawan, Ex. 'C' being the site plan in respect of property bearing No. E-1, Lajpat Nagar-III, New Delhi, Ex. 'D' being the affidavit of Roger Khanna @ Rajat Khanna and Ex. 'E' being the property tax challan in respect of E-1, ground floor and first floor, part basement of Lajpat Nagar- III for the period 2018-19.

5. The settlement agreement is signed by the authorized representative of Roger Khanna @ Rajat Khanna i.e. Shri Vimal Dhawan as also by Shri Anup Khanna who are present in Court and are identified by the learned counsel. They affirm the settlement arrived at between the parties and undertake that the parties would abide by the terms of settlement.

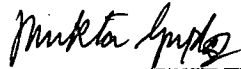
6. Consequently, the suits are decreed in terms of the settlement as noted above. Decree sheet will incorporate the terms of settlement and the exhibits.

7. Testamentary case is also disposed of in terms of the settlement.

8. Court fee be returned to the respective parties under Section 16 of the Court fees Act.

I.A. 9563/2017 (u/O XXXIX R 1&2 CPC) in CS(OS) 389/2017
I.A. 15877/2018 (u/O XXXIX R 1&2 CPC) in CS(OS) 593/2018
I.A. 13651/2018 (exemption), I.A. 1709/2019 (delay of 1 day by R-2) in
TEST.CAS. 57/2018

Applications are disposed of as infructuous.


MUKTA GUPTA, J.

JANUARY 31, 2020
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