

#36

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 19.12.2022

FAO(OS) 137/2022

**SANTOSH KUMARI ALIAS SHANTI DEVI
& ORS.**

..... Appellants

versus

AJAY KUMAR SINGHAL & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellants: Mr. Abhinav Sharma, Mr. Naveen Gaur and Mr. Deepak Jain, Advocates along with Appellant-in-person.

For the Respondents: Mr. D.S. Vohra, Advocate for R-1 to R-3.
Mr. Ashok Kumar, Advocate for R-4 to R-6.
Mr. N.K. Kantawala, Mr. Amaya M. Nair, Advocates for R-7.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J (OPEN COURT)

**CM APPL. 53155/2022(u/O XXIII Rule 3 r/w Section 151 CPC
filed on behalf of the parties for recording of compromise and
passing of a preliminary decree of partition between the parties)**

1. The present application under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 has been jointly

instituted on behalf of the parties praying as follows:

“In light of the above mentioned facts and circumstances, it is prayed that this Hon'ble Court may graciously be pleased to:-

a. Pass a preliminary decree of partition declaring that legal heirs of Sh. Ram Saroop and Sh. Kallu Mal are entitled to equal share i.e. 171 Sq. Yards each out of total area of 342 Sq. Yards in respect of immovable property bearing No. 29, Church Lane, Bhogal Jangpura, New Delhi.

b. Pass a preliminary decree of partition determining that the individual share of parties to the suit/Appeal out of 171 Sq. Yards in respect of immovable property bearing No. 29, Church Lane, Bhogal, Jangpura, New Delhi as hereinunder :-

Branch A of Shri Mange Ram Gupta

- (i) Santosh Kumari @ Shanti Devi -- 1/30th
- (ii) Ashok Kumar Singhal -- 1/30th
- (iii) Naresh Kumar Singhal alais Naresh Singhal- 1/30th
- (iv) Shashi Aggarwal -- 1/30th
- (v) Disha Garg -- 1/30th

Branch B of Shri Jage Ram Gupta

- (i) Ajay Kumar Singhal -- 1/18th
- (ii) Vijay Kumar Singhal -- 1/18th
- (iii) Sapna Singhal -- 1/18th

Branch C of Shri Ishwar Dayal Gupta

- (i) Pradeep Gupta -- 1/18th
- (ii) Sandeep Gupta -- 1/18th
- (iii) Anjana Gupta -- 1/18th

Branch D of Shri Kallu Mal

Asa Ram (Respondent No.7)- 1/2 share
out of 342 Sq. Yards

c. Appoint a local commissioner to carry out a partition by metes and bounds of the immovable property i.e. 29, Church Lane, Bhogal Jangpura, New Delhi admeasuring 342 Sq. yards with respect to the respective individual shares of the parties thereunder.

d. Any other order which this Hon'ble Court may deem fit to pass in present facts and circumstances."

2. Learned counsel appearing on behalf of the parties invite our attention to paragraphs 9 to 14 of the present application to urge that preliminary decree of partition be passed, in terms of the compromise/settlement arrived at by and between the parties in relation to the subject property of the present appeal.

3. Paragraphs 9 to 14, which elaborate the compromise/ terms and conditions for passing a preliminary decree of partition between the parties are reproduced hereinbelow:

"9. It is submitted that during the pendency of the suit and the present appeal, the parties being close relatives have decided to amicably resolve their issues and disputes pertaining to suit property. The parties have admitted and acknowledge the undivided 1/3rd share of each of three brothers thereto.

10. That in between the legal heirs of late Sh. Ram Saroop i.e. the Appellants and Respondents No. 1 to 6 and late Sh. Kallu Mal i.e. Respondent No.7, it is stated that the legal heirs of late Sh. Ram Saroop is entitled to ½ share in the suit property i.e. property bearing 29, Church Lane, Bhogal, Jangpura, New Delhi admeasuring 342 sq. yards. Further, the legal heir of late Sh. Kallu Mal is entitled to the remaining ½ share in the suit property i.e. property bearing 29, Church Lane, Bhogal, Jangpura, New Delhi admeasuring 342 sq. Yards

11. Thus, the legal heirs of late Sh. Ram Saroop i.e. the Appellants and the Respondents No.1 to 6 are entitled to 171 sq. yards out of 342 sq. yards of property bearing 29,

Church Lane, Bhogal, Jangpura, New Delhi.

12. The legal heir of late She Kallu Mal i.e. Respondent No.7 is entitled to 171 sq. yards out of 342 sq. yards of property bearing 29, Church Lane, Bhogal, Jangpura, New Delhi. It is submitted that the legal heir of Shri Kallu Mal is in peaceful possession of their respective portion.

13. That further the legal heirs of late. Sh. Ram Saroop i.e. the Appellants and Respondents No. 1 to 6 have consented and agreed to ascertain and determine their respective shares in the property i.e. 171 sq. yards of property bearing 29, Church Lane, Bhogal, Jangpura, New Delhi as under:-

A. The legal heirs of **Mange Ram Gupta** i.e, **Appellants, shall be entitled to 1/3rd share in the property i.e. 171 sq. yards of property bearing 29, Church Lane, Bhogal Jangpura, New Delhi.** The individual shares of the Appellants are determined as under:

- i. Santosh Kumari @ Shanti Devi - 1/30th
- ii. Ashok Kumar Singhal- 1/30th
- iii. Naresh Kumar Gupta alias Naresh Singhal - 1/30th
- iv. Shashi Aggarwal- 1/30th
- v. Disha Garg - 1/30th

B. The legal heirs of **Jage Ram Gupta i.e. Respondents No.1 to 3 shall be entitled to 1/3rd share in the property i.e. 171 sq. yards of property bearing 29, Church Lane, Bhogal Jangpura, New Delhi.** The individual shares of the Respondents No. 1 to 3 are determined as under:-

- i. Ajay Kumar Singhal- 1/18th
- ii. Vijay Kumar Singhal- 1/18th
- iii. Sapna Singhal- 1/18th

C. The **legal heirs of Ishwar Dayal Gupta shall be entitled to 1/3rd share property i.e. 171 sq. yards of property bearing 29, Church Lane, Bhogal Jangpura, New Delhi.** The individual shares of the Respondents No.4 to 6 are determined as under:-

- i. Pradeep Gupta – 1/18th
- ii. Sandeep Gupta - 1/18th
- iii. Anjana Gupta - 1/18th

14. That in view of the admitted shares of the parties as aforesaid, the parties have jointly approached this Hon'ble Court seeking the indulgence of this Hon'ble Court to pass a preliminary decree of partition determining the respective shares of the parties as stated above. Therefore, the parties are filing the present Joint application before this Hon'ble Court for recording the statement of the parties and thereafter passing of preliminary decree in respect of above noted shares thereof."

4. A perusal of the application reveals that the terms and conditions of the settlement are lawful. The parties have appended their signatures to the present application, which are also duly supported by affidavits. The parties are present in court today and have duly agreed to the terms and conditions of the above-mentioned settlement arrived at between them with respect to the subject property. The undertaking is duly accepted. The parties are directed to comply with the terms and conditions of the settlement elaborated herein above, without demur.

5. Hence, in the interest of justice, with a view to apply quietus to the protracted litigation between the parties, with respect to subject property bearing No. 29, Church Lane, Bhogal Jangpura, New Delhi, admeasuring 342 Sq. Yards; a preliminary decree of partition is passed

ascertaining the shares of the parties, in view of the terms and conditions elaborated hereinabove.

6. In view of the foregoing discussion, the present application is allowed. Mr. Dhruv Arora, Advocate, having Enrolment No.D/2083/2017, Mobile No.9810012712, is appointed as a Local Commissioner, who shall file his report suggesting therein, the mode of partition, by the way of metes and bounds.

7. The local commissioner may also take assistance of an architect, if so required. The fee of the Local Commissioner is fixed at Rs.1,00,000/- (Rupees One Lakh only) to be borne by the parties equally, besides incidental and out of pocket expenses.

8. Learned counsel for the parties shall lend full assistance to the Local Commissioner in carrying out the inspection and provide all necessary documents/site plan, etc., as may be requested by the Local Commissioner.

9. The commission shall be executed within 6 weeks from today and report thereof be filed thereafter. Needless to say that learned Local Commissioner shall put the parties to advance notice prior to his visit/inspection of the property.

10. The report of the Local Commissioner be filed on the record of

subject suit no. CS (OS) 373/2018 titled as “*Ajay Kumar Singhal & Ors vs Mange Ram Gupta & Ors.*” on or before the next date of hearing, before the learned single judge i.e. 28.02.2023.

11. A copy of this order be sent to the Local Commissioner for necessary information and compliance.

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12. The present appeal is disposed of, in terms of the compromise arrived at between the parties. All the pending applications stand disposed of.

13. The Registry is directed to prepare a Preliminary decree sheet, in terms of the order passed in CM APPL.53155/2022.

14. A copy of this order be provided to learned counsel appearing on behalf of the parties and be also uploaded on the website of this Court

**SIDDHARTH MRIDUL
(JUDGE)**

**TALWANT SINGH
(JUDGE)**

DECEMBER 19, 2022/dn

[Click here to check corrigendum, if any](#)