

\$~26.

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

% ***Date of Judgment: 24.04.2023***

+ **RFA 18/2022**

RAJENDRA KUMAR GUPTA

@ RAJENDER KUMAR GUPTA

..... Appellant

Through: Mr. Arvind K. Gupta, Advocate.

versus

SOOBASH GARG @ SUBHASH GARG

& ORS.

..... Respondents

Through: Mr. Alok Kumar, Senior Advocate with Mr. Amit Kumar Singh, Advocate for R-1 along with R-1 in person.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 19945/2023

1. This is an application filed by respondent No.1 for putting a quietus to the inter se dispute between the parties.
2. Respondent No.1 has filed the present application whereby respondent No.1 prays that the present preliminary decree may be modified to the extent that the appellant shall be getting 60% and respondents No. 1 and 3 shall be getting 20% share each in the

RFA 18/2022

Page 1 of 3

property i.e, Flat No.95-A, Pocket-A, Mayur Vihar Phase-II, Delhi-110092. The appellant states that he has no objection to the present application being allowed and further states that if the present application is allowed, he will withdraw the present appeal.

3. Learned Trial Court vide the impugned judgment, passed a preliminary decree of partition in respect of all the three suit properties holding that the appellant and respondents No.1 to 3 are entitled to have 25% share in each of the suit properties. The appellant challenged the said preliminary decree only to the extent of his share in Flat No.95-A, Pocket-A, Mayur Vihar Phase-II, Delhi-110092. It is the case of the appellant that Smt. Sushila Devi, mother of the parties and Sh. Harish Gupta, respondent No.2 herein had relinquished their respective shares in the Mayur Vihar Property in favour of the appellant and hence, he is entitled for 60% share in the said Mayur Vihar property.
4. A perusal of the impugned judgment shows that both respondent No.2 and respondent No.3 were ex-parte before the learned Trial Court. Despite service, there is no representation on behalf of respondents No.2 & 3 in the present proceedings. Hence, Respondent No.1 is the only contesting respondent.
5. This Court notes that respondent No.2 relinquished his share in the Mayur Vihar property vide registered Relinquishment Deed dated 04.05.1999 (Exhibit DW1/8). The appellant proved the said registered document on record by examining DW-2, the concerned official from the Sub-Registrar Office. Further, this

position has never been disputed by respondent No.2 as he chose not to contest the present proceedings.

6. Respondent No.3 also never challenged the veracity of the two Relinquishment Deeds i.e., Exhibit DW1/8 & Exhibit PW9/D10.
7. It was the respondent No.1 who was challenging the veracity of the said Relinquishment Deeds. However, now by way of the present application, he has accepted the said Relinquishment Deeds.
8. In view of the same, the present application is allowed. The preliminary decree passed by the learned Trial Court is modified to the extent that the appellant shall have 60% share, respondent No.1 shall have 20% share and respondent No.3 shall have 20% share in the property, i.e, Flat No.95-A, Pocket-A, Mayur Vihar Phase-II, Delhi-110092.
9. In the above terms, the application stands disposed of.

RFA 18/2022

10. In view of the order passed in CM No. 19945/2023, present appeal is disposed of along with the pending applications.
11. Decree sheet be drawn accordingly.

GAURANG KANTH, J.

APRIL 24, 2023

N³