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

+ **CS(OS) 2/2022**

PIJUSH KANTI DAS

.....Plaintiff

Through: Ms. Mansoor Ansari, Advocate with
Smt. Sandhya Das, Ms. Joita Das and
Mr. Jaideep Das, Legal Heirs of the
plaintiff in persons

versus

PRADEEP KUMAR DAS

.....Defendant

Through: Mr. Khalid Abdullah, Advocate with
defendant in person

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **08.11.2024**

I.A. 32915/2024 (Application under Order XXII Rule 3 CPC on behalf of
the LRs of the plaintiff)

1. This is an application filed by the Legal Heirs of the plaintiff under Order XXII Rule 3 Code of Civil Procedure, 1908 ('CPC') for bringing on record the legal heirs of the deceased plaintiff.
2. It is stated in the application that the plaintiff unfortunately passed away on 02.03.2024 and he was survived by his wife, daughter and son. The details of the Class I legal heirs have been enlisted in paragraph '3' of this application.
3. Issue notice. Learned counsel for the defendant accepts notice. He states that he admits the contents of the application and has no objection to the application being allowed.
4. Accordingly, the application is allowed and Smt. Sandhya Das i.e., wife of plaintiff, Ms. Joita Das i.e., daughter of plaintiff and Mr. Jaideep Das



i.e., son of the plaintiff are substituted in place of the original plaintiff.

5. The plaintiffs are directed to file amended memo of parties within two (2) weeks.

CS(OS) 2/2022 and I.A. 44527/2024 under Order XXIII Rule 3 CPC for recording of compromise between plaintiffs and defendant)

6. This is a joint application on behalf of the newly impleaded legal heirs of the plaintiff and defendant under Order XXIII Rule 3 CPC for recording of the compromise arrived at between the parties.

7. Learned counsels for the parties' state that the legal heirs of the deceased plaintiff and the defendant have entered into an out of Court settlement reduced in writing as settlement deed dated 08.10.2024. They pray that the suit be decreed in terms of the settlement deed dated 08.10.2024.

8. The three (3) legal heirs of the plaintiff are present in Court and the defendant is also present in Court. The parties have been identified by their respective counsels.

9. This Court has interacted with the parties and the parties have confirmed that they have duly executed the settlement agreement dated 08.10.2024 and are satisfied with the terms and conditions recorded therein.

10. This Court has also perused the terms of the settlement agreement dated 08.10.2024 and are satisfied that the same are lawful.

11. Some of the essential terms of the settlement agreement dated 08.10.2024 are reproduced hereinbelow for reference.

“i. That Party to the First and Second Part have jointly agreed that since the Said **Property** is having a very old construction, hence, the same is to be demolished and rebuilt again. Under the circumstances **Parties shall** vacate & move out of the Said Property on or before 30/11/2024 to make the **Said property** vacant for its



demolition, rebuilt & refurbishing on underneath Plot of land.

ii. **That** since the parties are unable to reconstruct the building by their own funds and resources as such the Parties herein have agreed to enter in to a collaboration Agreement with **M/s PMR Constructions, office at C-42, DDA Flats, Kalkaji, New Delhi-110019 through its Partner Shri Prashant Mallick** (hereinafter referred to as the Builder) who shall get the Building plan Sanctioned from the office of MCD with respect to **Said Property** and shall construct the following Floors on the **Said Property** with Maximum Permissible FAR and shall obtain the completion/occupation Certificate from the Statutory Authority/ies, as required:

Stilt Floor for Car Parking(s)
Ground Floor
First Floor
Second Floor
Third Floor with Terrace Right

iii. That Parties have decided that in consideration of the Builder construct the residential Building on the **Said Property**, they shall give the Builder, **Second Floor** of the newly constructed Residential Flat With 25% share in stilt floor which includes one car parking (with separate entry adjacent to staircase and lift) in the Stilt Floor and 25% undivided share in the land underneath area measuring 131.25 Sq. Yards of the **Said Property** and the parties herein shall retain the Balance Area including complete 75% Stilt Area for Parking & other facilities, Complete **Ground, First & Third Floor** with terrace rights and 75% undivided share in the land underneath area measuring 131.25 Sq. Yards between them.

iv. **That** it has been agreed between **the First and Second Party**, in order that no future difference and/or dispute should creep up between them, hence, have decided that the proposed area/floors being constructed on the **Said Property** be also divided between them in an amicable manner. After proper deliberation, a joint consensus is derived between the **First and Second Party** to divide the Area / Floors as under:

- A) Proposed Floor/s owned and possessed by the First Party:**
- 1. 50% Stilt Area for Parking of Two cars**
 - 2. Entire Ground Floor**
 - 3. Entire First Floor**



4.50% undivided share in the land underneath area measuring 131.25 Sq. Yards

B) Proposed Floor/s owned and possessed by the Second Party:

- 1. 25% Stilt Area for Parking of One Car**
- 2. Entire Third floor with Terrace Right**
- 3. 25% undivided share in the land underneath area measuring 131.25 Sq. Yards**

v. That the Second Party shall have exclusive ownership right on the terrace of the Third Floor with the right to build maximum of one additional floor if allowed by the MCD/authority, (but other floor owners shall have full right of access to the top terrace (mumty) with separate entry to install/reinstall/repair antenna, IGL gas connection, get the overhead tank repaired/ cleaned/replace etc.). That similar condition shall apply to the underground water tank and booster pump etc. In the event of any construction on the terrace of the third floor (if permissible by MCD/authority), the Second Party/owner of the terrace shall shift the water tank and other amenities of the other floor owners on the subsequent floor with their own cost and expenses and indemnify the other floor owner if any damage cause to the building.

vi. That the Second Party, upon electing to construct a floor on the terrace of the third floor (i.e., the fourth floor), shall not be permitted to carry out any further construction of any nature on the terrace of the fourth floor.

... ..

xv. **That** it has further been decided that after completion of Construction of the **Said Property**, the **Sale Deed** shall be registered by both the **Parties** in favor of **M/s PMR Constructions or its nominee for the Second Floor** of the newly constructed Residential Flat with 25% share in stilt floor which includes one car parking (with separate entry adjacent to staircase and lift) in the Stilt Floor of the **Said Property on** terms as mutually decided between the **Parties**. It is clarified that all expenses with respect to Transfer/Registration of **Sale deed** with respect to **Second Floor** of the newly constructed Residential Flat with 25%, share in stilt floor which includes one car parking (with separate entry adjacent to staircase and lift) in the Stilt Floor of the **Said Property** as allotted and given to Builder/Collaborator (**M/s PMR Constructions**) shall be borne by



Builder/Collaborator without any obligation on part of **Parties herein**.

xvi. That it has been decided that after completion of the Construction of the **Said Property, the First Party and the Second Party** shall enter into a Partition Deed in order to partition the said property as per this settlement, which shall be Registered in the office of the Sub-Registrar and the expenses towards the registration of the said partition deed shall be equally shared by both parties.

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12. In the considered opinion of this Court, there is no impediment in allowing the present application and decreeing the suit in terms of the settlement agreement dated 08.10.2024.

13. Accordingly, the application is allowed and the suit is decreed in terms of the settlement agreement dated 08.10.2024. It is directed that the settlement agreement dated 08.10.2024 shall form part of the decree.

14. Let the decree sheet be drawn up in terms of the settlement agreement dated 08.10.2024.

15. Pending applications stand disposed of. All future dates stand cancelled.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 8, 2024/msh/sk

Click here to check corrigendum, if any