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

+ RFA 481/2018, CM APPL. 48967/2023, CM APPL. 14074/2024 &
CM APPL. 71802/2024

ANAND TANDON

.....Appellant

Through: Mr. Abhishek Puri, Ms, Surbhi
Gupta and Mr. Sahil Grewal,
Advocates.

versus

DR. J K TANDON & ORS

.....Respondents

Through: Mr. Ashish Verma, Mr. Kartikey
Bhargawa and Mr. Shaksham
Thareja, Advs. for R-1 to 5
Ms. Shiva Laxmi, CGSC with Mr.
Govind Sharma, Adv. for R-6
Mr. Ravinder Singh, Ms. Raveesha
Gupta and Mr. Ritvik Bhardwaj,
Advs. For R-7
Mr. Kunal Sharma and Mr. Adhirath
Choudhary, Advs. for DDA

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.12.2024

1. By order dated 26.09.2024, it was recorded as follows:

"1. This appeal arises out of a preliminary judgment and decree dated 04.05.2017 and a final judgement dated 07.09.2017 passed in a partition suit.

2. During the course of proceedings before this Court, a settlement was arrived at between the parties by which the shares of each of the parties, as granted by the impugned decree were modified to some extent. The order dated 25.09.2023, read with a correction order dated 10.01.2024, records the terms of the settlement. The order dated 10.01.2024 also records that the parties have identified a buyer for the



suit property, and intend to divide the sale proceeds in the ratio set out in the said orders.

3. The proposed buyer - M/s Windchimes Constructions Privates Limited ["Windchimes"], was impleaded as a party by an order dated 06.05.2024, on an application made by it. One of the conditions of the sale to Windchimes is that the property be converted to freehold. For this purpose, notice was issued to Delhi Development Authority ["DDA"] by order dated 09.04.2024, to apprise the Court on the status of the application for conversion of the property.

4. Mr. Kunal Sharma, learned counsel for DDA, seeks two weeks' time to file a compliance report. According to learned counsel for Windchimes, the application for conversion has been processed by DDA, and Windchimes has been asked to buy the requisite stamp papers. He submits that the formalities will be completed within the next 10 days. What will be then left is for Windchimes to make a payment in terms of the agreement, and for the conveyance to be executed in its favour.

5. In the meanwhile, one of the parties to the suit and the settlement agreement, Smt. Sarla Seth, has passed away. Her heirs, Mr. Mridul Seth and Ms. Malvica Seth, have been impleaded by an order dated 06.05.2024. It has also been recorded that they will also sign the required documents for transfer of the property to Windchimes, and that the shares of late Ms. Sarla Seth shall be deposited by Windchimes in Court. Learned counsel for the two heirs submit that her share will be distributed amongst them, in accordance with the direction of the Court in two partition suits filed by Mr. Mridul Seth, which are pending in this Court.

6. It appears to me that once the shares of the parties have been settled between them [subject to the division between the legal heirs of late Ms. Sarla Seth, which is the subject matter of the separate partition suit] and the mode of partition has also been decided, nothing really survives in this appeal. The issues between Windchimes, DDA and the parties to the suit are now a matter for execution, if necessary.

7. However, learned counsel for the parties state that a short adjournment will enable them to implement the settlement in full and obviate the need for execution proceedings between the parties, who are already in their 70s and 80s.

8. Having regard to this submission, list on 13.11.2024.

9. It is made clear that the appeal will be disposed of on that date by relegating the parties to execution proceedings, if necessary."

2. Unfortunately, respondent No.1 passed away on 23.10.2024, pursuant to which an application [CM APPL. 71802/2024] was filed to bring his legal heirs on record.



3. As noted in the order dated 25.11.2024, deceased respondent No.1 was survived by three legal heirs being (i) his wife, Mrs. Meena Tandon; (ii) his son, Mr. Ashish Tandon; and (iii) his daughter, Mrs. Shachi Bahl. Pursuant to the said order, all three have filed affidavits in this Court. Both Mr. Ashish Tandon and Mrs. Shachi Bahl have confirmed that they have relinquished their rights in the suit property bearing B-3/22, Vasant Vihar, New Delhi in favour of their mother Mrs. Meena Tandon and they are agreeable to the settlement agreement entered into by their father and for disposal of the appeal in terms of the orders passed by this Court.

4. Mrs. Meena Tandon has also filed an affidavit dated 30.11.2024 to the same effect.

5. Having regard to the above, CM No. 71802/2024 is allowed with the consent of learned counsel for the parties.

6. The amended memo of parties filed with the application unfortunately contains errors. Learned counsel for the appellant is directed to file a proper amended memo of parties during the course of day.

7. The question now is of disposal of the appeal in terms of the settlement recorded in the order dated 25.09.2023, read with a correction order dated 10.01.2024. The order dated 25.09.2023 reads as follows:

- “1. This is a petition seeking to challenge the preliminary judgment and decree dated 04.05.2017 and the final judgment dated 07.09.2017 passed in CS 179/2017 passed by ADJ-01, Patiala House Courts, New Delhi.*
- 2. The appellant and the respondents are legal heirs of Late Shri H.K Tandon, who was the owner of property No. 22/B-3, Vasant Vihar.*
- 3. Respondent Nos. 1 to 3 filed the suit for partition, declaration and injunction and vide order dated 04.05.2017, a preliminary decree for partition was passed wherein the appellant and respondent were entitled 1/7th share each in the suit property.*
- 4. Subsequently, the final judgment dated 07.09.2017 was also passed directing the property to be sold since the property was incapable of partitioning by meets and bounds with the share of each party defined as*



1/7th. Subsequently, the parties have arrived at a settlement, wherein the new share of the parties are described as under:

	Name	Settlement			
1.	Mr. Anand Tandon	25	26	27	28
2.	Dr. JK Tandon	12.14	11.94	11.74	11.54
3.	Mrs. Uma Kapoor	12.14	11.94	11.74	11.54
4.	Mrs. Sarla Seth	12.14	11.94	11.74	11.54
5.	Mrs. Vijay Lakshmi Sikka	12.14	11.94	11.74	11.54
6.	Mrs. Geeta Tandon	12.14	11.94	11.74	11.54
7.	Ms. Pushpa Tandon	14.28	14.28	14.28	14.285
	Total	100	100	100	100

5. The appellant gets 28% share in the property and the respondent Nos. 1 to 5 have reduced their share to 11.54% in the suit property. Respondent No. 6 has neither challenged the decree nor is appearing in the Court, anyways her share has not been altered by the intersay arrangement. Her share continues to be 1/7th in the suit property.

6. Accordingly, with consent of parties the preliminary decree is modified and the share of the appellant is redefined as 28%, share of respondent Nos. 1 to 5 as 11.54% and share of respondent No. 6 continues to be 1/7th i.e. 14.285%, in the suit property.

7. Accordingly, with consent of parties, the preliminary judgment dated 04.05.2017 and the final judgment dated 07.09.2017 are modified accordingly.

8. Since the property is incapable of partition through metes and bounds, the only course available is to sell it by public auction.

9. I am informed that respondent No. 6 is in physical possession of the first floor of the said property.

10. Let notice be issued to her (Respondent No. 6) as well in order to ascertain if any of the parties are interested in buying the property through inter-se auction.

11. In case the same is not done before the next date of hearing, a Local Commissioner will be appointed for taking further action.

12. List on 10.11.2023.”



[Emphasis supplied.]

8. The correction incorporated by the order dated 10.01.2024 is that the share of respondent Nos. 1 to 5 would be read as 11.543% each instead of 11.54%.

9. The consequence of the aforesaid orders is that the impugned preliminary decree and final decree stand modified, to the extent that the shares of the parties in the suit property are declared as follows:-

- (i) Mr. Anand Tandon (appellant) - 28%
- (ii) Mrs. Meena Tandon (respondent No. 1(i)) - 11.543%
- (iii) Mrs. Uma Kapoor (respondent No. 2) - 11.543%
- (iv) Legal heirs of Mrs. Sarla Seth (Deceased respondent No. 3) - 11.543% (collectively)
- (v) Mrs. Vijay Lakshmi Sikka (respondent No. 4) - 11.543%
- (vi) Mrs. Geeta Tandon (respondent No. 5) - 11.543%
- (vii) Ms. Pushpa Tandon (respondent No. 6) - 14.285%

10. The decree sheet be prepared in accordance with the above shares of the parties.

11. By order dated 06.05.2024, Windchimes Construction Pvt. Ltd. was impleaded as a respondent in the appeal, and the parties have proceeded in pursuance of a transaction for the sale of the suit property to Windchimes Construction Pvt. Ltd. The said proceedings can now be carried to their logical conclusion in execution proceedings, if necessary, rather than the present appeal arising out the decree.

12. As far as the shares of legal representatives of Late Mrs. Sarla Seth are concerned, as noted in the orders dated 06.05.2024 and 26.09.2024, those issues will have to be resolved in two partition suits filed by Mr.



Mridul Seth, which are pending in this Court. Amount deposited in the present appeal towards the share of Mrs. Sarla Seth under the order dated 06.05.2024 will be transferred to the credit of Suit No. 197/2024, and will abide by the directions of the Court in the said suit as between Mr. Mridul Seth and Ms. Malvica Seth. The balance of the share of Mrs. Sarla Seth in the sale proceeds, will also be deposited in the said suit. Any further orders in this regard, if necessary, may be passed in execution proceedings.

13. The present appeal is disposed of with these directions.

PRATEEK JALAN, J

DECEMBER 16, 2024

'tp/JM'/'