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

+ RFA 88/2026, CM APPL. 5495/2026

SH. DEVI DAYAL GUPTA (SINCE DECEASED) THROUGH LRS
.....Appellant

Through: Mr. Chirag Anand & Mr. Vireshwar
Tyagi, Advs.

versus

SH. NAFE SINGH GUPTA & ORS.Respondents

Through: Mr. Kapil Gupta, Mr. Mayank Tomar
& Mr. Prateek Singh Sikarwar, Advs.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **02.02.2026**

CM APPL. 5496/2026

1. Exemption allowed, subject to all just exceptions.
2. Application is disposed of.

RFA 88/2026, CM APPL. 5495/2026

3. Appeal under Section 96 C.P.C. has been filed on behalf of the Appellant against Judgment dated 13.05.2025 and Final Decree dated 11.11.2025 passed by learned DJ-02, Shahdara District, Karkardooma Court, Delhi in CS No.1804/2016, in regard to immovable property bearing No.59, Gali No.2, Near MCD Primary School, Chandu Park, Krishan Nagar, Delhi (area admeasuring 264 sq. Yards).
4. Only grievance of the Appellant, who is entitled for 10/36th share in aforesaid suit property, is that before passing Final Decree on 11.11.2025, no Local Commissioner had been appointed to ascertain the mode of partition, in compliance of Order XXVI Rule 13 and 14 C.P.C.
5. Perusal of record shows that the parties had been given opportunity to submit proposal for the mode of partition, which never came-forth.



Considering the size of the suit property and number of Legal Heirs, it was held that the property may be sold and the sale proceeds be divided among the parties after deducting the necessary expenses of the auction proceedings, in accordance with their respective shares, as were declared in Preliminary Decree dated 27.11.2024. Moreover, parties had been given liberty to invoke Section 3 of the Partition Act, 1893, at the time of execution of Final Decree.

6. In regard to appointment of Local Commissioner, it is pertinent to note that considering the size of the suit property and number of Legal Heirs / owners, the exercise had been undertaken by the Court to ascertain if the mode of partition of the suit property was possible through metes and bound, by seeking proposal for mode of partition, from the parties.

7. Appellant was again given opportunity to get the Local Commissioner appointed by this Court, but they only answered that they are willing to buy the share of the other Legal Heirs / owners of the suit property. This option has already been granted to the Appellant vide impugned Judgment dated 13.05.2025.

8. Legal Heirs of the Appellant are at liberty to move Application under Section 3 of the Partition Act, 1893, as already observed in the impugned Judgment dated 13.05.2025, to buy the share of other Legal Heirs / owners of the suit property, which may be considered by the learned Executing Court, in accordance with law.

9. There is no merit in the present Appeal, which is hereby dismissed along with pending Applications.

NEENA BANSAL KRISHNA, J.

FEBRUARY 2, 2026/R