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09.09.2022

Present: Sh. Sunil Khanna, Ld. counsel for DH/applicant.

Sh. Praveen Suri, Ld. counsel for JD no.1 to 3 alongwith JD No. 1.

None for defendant no. 4.

Ld. counsel for DH submits that the JDs be directed to deposit the applicable stamp duty as directed in order dt. 08.04.2022 for preparation of the decree.

Same is strongly opposed by JD No. 1,2&3 who submits that the DH may furnish stamp paper for the applicable stamp duty on the valuation of the suit property and the share of the JD no. 1,2&3 towards the stamp duty may be recovered by DH from the amount realized upon sale of the suit property.

Heard. Perused.

Vide order dt. 08.04.2022 the application of plaintiff/DH U/s 152 r/w Sec. 151 CPC was allowed as the original decree passed by the Court of ADJ-03 (West), Tis Hazari, Delhi on 06.07.2018 had inadvertently omitted to mention that:-

“the final decree of partition be engrossed on the stamp paper to be submitted by the parties as per Article 45, Schedule 1 of Indian Stamp Act 1899 on the market value of the suit property as on the date of passing of the decree. The final decree of partition engrossed on the stamp paper, shall be liable for registration as per section 17 of Indian Registration Act. “

The execution petition is filed before this Court on 06.07.2019 and during the hearing on 07.03.2020 it was noted by Ld. Predecessor that the final decree of partition has not been prepared on the stamp paper and the parties sought some time to argue on the said aspect. Thereafter, an application was filed on 27.02.2021 on behalf of JD No.1,2&3 U/s 151 CPC whereby they had sought dismissal of the execution petition on the ground that the decreesheet is silent with regard to the relief of sale of property by way of public auction and it is only a decree of partition having shares mentioned therein, and decree cannot be executed unless and until decreeholder files a fresh decree in terms of order and judgment dt. 06.07.2018.

Pursuant to said application, the DH has filed the present application which was disposed off on 08.04.2022 after holding that inadvertent typographical mistake/omission in the decree dt. 06.07.2018 is required to be corrected and final decree is to be prepared accordingly.

However, this Court is not the successor Court of Ld. ADJ-03 (West) which has passed the decree dt. 06.7.2018 and it is only an Executing Court and therefore, it cannot go beyond the decree unless the decree itself is corrected/modified by the Ld. Court which has passed the decree.

Accordingly, I am satisfied that the proceedings of the present application are required to be transferred to Successor Court of Ld. ADJ-03 (West) which is having the judicial record of Civil Suit no. 612341/16 titled as “Meena Viridi Vs. Sardar Manmohan Singh & Ors.”, for appropriate orders of mentioning of the requirement of Stamp Act and Registration Act as observed herein.

M. Ex. 78/2022

Meena Viridi Vs. Sardar Manmohan Singh & Ors.

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Hence, parties are directed appear before Ld. Principal District & Sessions Judge, West, Tis Hazari, for appropriate orders, on **28.09.2022**.

(Pawan Singh Rajawat)

ADJ-08/West

THC: Delhi:09.09.2022