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

+ **CS(OS) 140/2023 & I.A. 4041/2023, I.A. 20292/2023**

TAPATI MAZUMDAR & ANR.

.....Plaintiffs

Through: Ms. Manpreet Kaur and Ms. Diya
Jain, Advocates

versus

KAVERI KAPOOR & ORS.

.....Defendants

Through: Mr. Praveen Kumar, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **02.09.2024**

I.A. 20292/2023 (Under Order XII Rule 6 CPC)

1. This is an application filed by the plaintiffs under Order XII Rule 6 of Code of Civil Procedure, 1908 ('CPC').

1.1 It is stated that the suit has been filed for partition and possession of built-up property bearing No. D-766, admeasuring 158 sq. yards, situated at Chittaranjan Park, New Delhi-110019 consisting of a ground floor and barsati floor i.e., the suit property.

1.2 It is stated that the plaintiffs herein are claiming succession in the estate of the original allottee of the suit property i.e., Sh. Arun Chandra Mazumdar through his (now) deceased son Sh. Ashok Mazumdar.

1.3 It is stated that the plaintiffs herein are Class-I legal heirs of late Sh. Ashok Mazumdar, who died on 09.08.2018. It is also stated that the original allottee Mr. Arun Chandra Majumdar, who was the father of late Sh. Ashok Mazumdar died on 25.01.2008.



1.4 It is stated that late Shri Arun Chandra Mazumdar was survived by his widow, his three (3) daughters and three (3) sons. However, subsequently his widow Smt. Ila Mazumdar also passed away on 09.05.2021 and it is stated that she died intestate.

1.5 It is thus contended in the plaint that the suit property is, therefore, liable to be divided between the three (3) surviving daughters, the two (2) surviving sons of late Sh. Arun Chandra Mazumdar and the plaintiffs herein.

2. The plaintiffs collectively claim 1/6th undivided share in the suit property. The plaintiffs admits that defendant nos. 1 to 5 are each entitled to 1/6th undivided share in the suit property.

3. The application under Order XII Rule 6 CPC has been filed for passing of the preliminary decree declaring the shares of the plaintiffs and the defendants herein.

4. Learned counsel for the defendant nos. 1 to 5 states that he has no objection to the passing of the preliminary decree and the defendant(s) admit the plaintiffs co-ownership rights in the suit property.

4.1 He states, however, the plaintiffs had no cause of action to institute the present suit as defendants had never disputed their rights and in case the plaintiffs would have approached the defendants, there could have been an amicable resolution. He states defendant nos. 3 and 4 are in actual physical possession of the suit property.

4.2 He states that defendants have independently made inquiries with the developers, who are ready and willing to re-construct the suit property.

4.3 He states that as per the proposals received by the defendants, the developers have assessed the highest market value, at Rs. 9 crores.



4.4 He states that in case the plaintiffs are willing to sell out their shares, the developers can pay them $1/6^{\text{th}}$ value of their share, which is equal to Rs. 1.5 crores.

4.5 He states that defendants may be interested in retaining constructed portions of the suit property upon re-development.

4.6 He states that defendants are also ready and willing to accept any higher offer which the plaintiffs may obtain from third parties.

5. In response, learned counsel for the plaintiffs states that plaintiffs are willing to monetize their rights by selling their share to a developer. She states that Rs. 1.5 crores is acceptable, however, plaintiffs would like to make an attempt to find a developer, who is willing to offer higher value for the suit property.

6. This Court has considered the submissions of the parties.

7. In view of the admission of the ownership rights by the parties, a preliminary decree is hereby passed declaring plaintiffs together as owner to the extent of undivided $1/6^{\text{th}}$ share, further the defendant nos. 1 to 5 has owners of undivided $1/6^{\text{th}}$ share each in suit property bearing no. D-766, admeasuring 158 sq. yards, situated at Chittaranjan Park, New Delhi-110019.

8. The Registry is directed to draw up a preliminary decree.

9. With respect to the passing of the final decree, an opportunity is hereby granted to the plaintiffs to verify, if they can obtain a higher offer for the suit property in excess of Rs. 9 crores, failing which the statement of plaintiffs that they are willing to accept the value of Rs. 1.5 crores offered by the defendants or their nominated developer will become binding on the plaintiffs and a final decree in terms thereof shall be passed.



10. Learned counsel for the plaintiffs and defendants state that in order to enable the parties to draw up a final settlement agreement with respect to the passing of the final decree, the matter be, therefore, referred to the mediation so that the parties can consider the offers received from the developers/third parties.

11. At request of the parties, the matter is once again referred to the Delhi High Court Mediation and Conciliation Center ('Mediation Centre') and the Mediation Centre is requested to refer the matter to Ms. Prema Priyadarshini, Advocate, who was the earlier Mediator in this matter.

12. Plaintiff no. 2 is directed to remain personally present at the mediation proceedings.

13. List the matter before the Mediation Centre on 17.09.2024 at 03:00 PM.

14. List the matter before the Court on 04.02.2025.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 2, 2024/rhc/sk