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

+ **CS(OS) 76/2021 and I.A. 1634/2021**

SMT. SUNITA Plaintiff

Through: Mr. Vikas S. Singh, Adv.
versus

RAVINDER & ORS. Defendants

Through: Mr. Raj Kamal, Adv. for D-1 to 3.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **03.04.2024**

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff- Smt. Sunita *inter alia* seeking a preliminary decree of partition and to restrain the Defendants from creating third-party rights in the suit properties.
3. The Plaintiff- Smt. Sunita is the daughter of the late Shri Ratan Lal, who passed away intestate on 5th September, 2002. At the time of his death, he was survived by the Plaintiff and four sons: Ravinder, Anoop, Ashok, and Rajeev. Ravinder, Anoop, and Rajeev have been impleaded as Defendants Nos. 1, 2, and 3, respectively, in the present suit. Ashok, the fourth son, passed away on 27th October, 2020, and his LRs—including his wife, Asha, and children, Shivali, Vishal (@Laddu), and Navin (@Gaurav)—have been impleaded as Defendants Nos. 4 to 7. It is asserted that during his lifetime, the late Shri Ratan Lal acquired the following immovable properties, which are the subject matter of this suit (*hereinafter*, 'suit properties'):
 - Property bearing No. 1, located near Shiv Mandir, Zalim Mohalla, Village Tughlakabad, New Delhi-110044.



- Property bearing No. 230, Zalim Mohalla, Village Tughlakabad, New Delhi-110044.
4. The Plaintiff claims one-fifth share in the above properties.
5. Vide order dated 15th July, 2022, a preliminary decree was passed in the following terms:

“9. It is thus an admitted case of the parties that all the parties and the 5 children of Sh. Ratan Lai are entitled to 1/5th share in the two properties with 1/5th share each going to the plaintiff and defendant Nos. 1, 2 & 3 while 1/20th share each to defendant Nos. 4,5,6 & 7(1/5th divided amongst the 4 legal heirs)

10. A preliminary decree is hereby passed whereby the 1/5th share each in the two properties going to the plaintiff and defendant Nos. 1, 2 & 3 while 1/20th share in the two properties each to the defendant Nos. 4,5,6 & 7(1/5th divided amongst the 4 legal heirs)”

6. None appears for the Defendant Nos. 4 to 7. On behalf of the Plaintiff and Defendant Nos.1 to 3, ld. Counsels have entered appearance.
7. After the preliminary decree was passed, vide order dated 29th August, 2022, a Local Commissioner was appointed to visit the suit properties in this matter. The Local Commissioner has inspected the suit properties. Vide report dated 5th February, 2024, the Local Commissioner has come to the conclusion that the suit properties cannot be partitioned by metes and bounds. The relevant portion of the report of the Local Commissioner reads as under:

“8. That after inspecting the suit properties, the undersigned is of the opinion that the suit properties cannot be partitioned by meets and bounds. It is pertinent to mention both the suit



properties are of uneven structures and are made in a way that clear and equal division of the suit properties may not be possible. **The physical act of drawing boundary lines and dividing the property as per the shares of the parties, in the circumstances of the present case, is also difficult** in view of the fact that as far as the property bearing No. 230 is concerned, the said property has common open space and washrooms which have to be used by all the occupants and considering the small size of the units, the actual and physical division of the property is not possible. Further, the hallway leading to the property, being the only accessway, cannot be partitioned.

9. That with respect to property bearing No.1 (near Shiv Mandir), it is submitted that the said property, although being a single building, is divided into multiple units having different size, dimensions, access and locations. **The said property can also not be physically divided by meet and bounds for the reason that firstly, the property will have to be considered bearing in mind that it has two parts i.e. the smaller part being the one facing the main road and the bigger part being on another/ adjacent street.** Secondly, the property is already divided in several units of different sizes and also being old construction, it would be difficult to now divide the property physically and determine the exact share of the parties.

10. That in terms of the order dated 29.08.2022, the present Report is submitted accordingly for the kind perusal of this Hon'ble Court and the points of reference are answered as below:

a. Whether the suit property can be partitioned by meets and bounds? If yes, ways and means to partition the suit property by meets and



bounds.

Ans. In view of the reasons stated hereinabove, it is respectfully submitted that the partition by meets and bounds of the two suit properties may not be possible.

b. Whether the area /portion in the suit properties can be offset between the parties in order to partition the property?

Ans. During the course of local commission, the parties present did not express any particular opinion as to whether one party would prefer a particular property or a part thereof in exchange of the other property or their share in the other property. However, it is submitted that if one set of parties can choose to take property bearing No. 230, then it may be possible to determine the commercial value of property bearing No.1 and partition the properties by off-setting the proportionate area in the said property.”

8. The two suit properties are as under:

1. Property bearing no. 1, near shiv mandir, Zalim Mohalla, Village Tughlakabad, New Delhi.
2. Property bearing no. 230, Zalim Mohalla, Village Tughlakabad, New Delhi.

9. Both Id. Counsels for the Plaintiff and Defendant Nos.1 to 3 submit that they have no objection if the suit properties are auctioned. Both the Id. Counsels further submit that the same Local Commissioner, who had inspected the suit properties, may be appointed for effecting the sale.

10. Considering the fact that the parties have no objections if the suit properties are auctioned under the supervision of this Court, accordingly, Mr. Annirudh Sharma, Local Commissioner is also appointed as Local Commissioner for effecting/facilitating the sale of the above two properties.



11. The Local Commissioner shall take steps for conducting/effectuating the sale of the suit properties.
12. The Local Commissioner may obtain a valuation of the suit properties from a certified valuer within four weeks from the date of release of this order. The valuation may serve as the base price or reserve price for the auction.
13. The sale of the suit properties shall be advertised in at least two leading newspapers, one in English and one in the local language, and on any relevant online platforms to ensure wide publicity. The advertisements should include a description of the suit properties, the base price, the date and place of the auction, and contact details for the Local Commissioner.
14. Once the auction process is concluded, the Local Commissioner would declare the highest bidder, subject to the approval of this Court. For the same, the Local Commissioner is free to move an appropriate application. Upon the confirmation from the Court, the Local Commissioner shall also direct the successful bidder to deposit the balance amount within a stipulated time frame.
15. After the declaration of the highest bidder, once the sale is finalised, the Local Commissioner may move an application for confirmation of sale and for distribution of sale consideration amongst the parties after execution of the sale related documents.
16. Upon the completion of the entire auction process, the Local Commissioner shall prepare a detailed auction report including the process followed, bids received, and the outcome of the auction.
17. The fee of the Local Commissioner is fixed at Rs.1 lakh, excluding any out-of-pocket expenses. The fee shall be paid equally by the Plaintiff



and Defendant Nos.1 to 3. The cost of stamp duty, registration, and any other legal expenses related to the transfer shall be liable to be borne by the buyer.

18. For the said purpose, if any notices are to be issued to any of the parties, the same shall be done.

19. The parties shall appear before the Local Commissioner on 29th April, 2024. The Local Commissioner shall file his report after finalizing the details of sale.

20. In view of the above order, the stay application being ***I.A.1634/2021*** is disposed of.

21. List before the Court on 3rd September, 2024.

PRATHIBA M. SINGH, J.

APRIL 3, 2024/dk/dn

22. At this stage, Mr. Annirudh Sharma, Id. Advocate, Local Commissioner (***M: 9999080715***) has appeared and has been apprised of today's order.

PRATHIBA M. SINGH, J.

APRIL 3, 2024/dk/dn