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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 435/2021, I.A. 11765/2021, I.A. 346/2022, I.A. 18209/2023**
SMT RAJNI GROVER Plaintiff

Through: Mr.Sumesh Gandhi, Advocate

versus

SMT. SUMAN GROVER & ANR. Defendants

Through: Mr.Shivankar Sharma and
Mr.Vishesh Jain, advts. for D-1.
Mr.Achin Mittal, adv. for D-2.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

% **ORDER**
16.01.2024

The present suit has been filed for partition, possession, rendition of accounts, permanent and mandatory injunction with the following prayer:

“a-i) A preliminary decree of Partition be passed in favour of the Plaintiff and the Defendants to the extent of 1/3rd share i.e. 1/3rd for the Plaintiff, 1/3 each in favour of the defendants thereby partitioning the suit properties by metes and bounds and/or otherwise, which are as follows:-

i. Property bearing H.No.7, Paschim Vihar Extension, New Delhi- a built-up property measuring 300 sq.yards constructed to the extent of Basement, Ground Floor, First Floor And Second Floor and the common terrace hereinafter called the suit property No.1;

ii. Property No.167, a Villa, Baikunth Housing Society, Pushpanjali, Phase-I, Vrindawan (UP). The said property



is in the joint possession of the Plaintiff and the Defendants, hereinafter called the suit property No.2;

iii. Property bearing No.A-133, Assam Timber Market, Swarn Park, Mundka, New Delhi comprising in Khasra No.49/21/3, measuring 50x256 consisting partly constructed RCC roof and partly constructed with Tin Roof having approximately plot area 1425 sq.yards purchased by virtue of the sale deed 16.02.1994 in favour of M/s Asian Products consisting the Plaintiff and the Defendants being the partners therein; hereinafter called the suit property No.3:

a-ii) a final decree of partition for dividing the following properties by metes and bounds between the Plaintiff and the Defendants to the extent of 1/3d share i.e. 1/3 for the Plaintiff, 1/3 each in favour of the defendants, thereby partitioning the suit properties by metes and bounds and/or otherwise, which are follows, be also passed:-

i) Property bearing H.No.7, Paschim Vihar Extension, New Delhi- a built-up property measuring 300 sq.yards constructed to the extent of Basement, Ground Floor, First Floor And Second Floor and a common terrace, hereinafter called the suit property No.1;

ii) Property No.167, a Villa, Baikunth Housing Society, Pushpanjali, Phase-I, Vrindawan (UP). The said property is in the joint possession of the Plaintiff and the Defendants, hereinafter called the suit property No.2;

iii) Property hearing No.A-133, Assam Timber Market, Swarn Park, Mundka, New Delhi comprising in Khasra No.49/21/3, measuring 50x256 consisting partly constructed RCC roof and partly constructed with Tin Roof having approximately plot area 1425 sq.yards purchased by virtue of the sale deed 16.02.1994 in favour of M/s Asian Products consisting the Plaintiff and the Defendants being the partners therein; hereinafter called the suit property No.3;



b) Pass a decree of Rendition of accounts in favour of the Plaintiff and against the Defendants thereby directing the Defendant to account-for the income derived from M/s Asian Products, which was partnership firm in favour of the plaintiff to extent of 1/3 share;

c) Pass a decree of Permanent injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their agents, servant and associate from selling, parting with possession and creating third party interest in the suit properties No.1 to 3, as mentioned in Para No.3 of the plaint;

d) Pass a decree of Mandatory injunction in favour of the Plaintiff and against the Defendants, directing Defendants to deposit the original Title documents before the court of law and not to take any undue benefit including not to use the name and good will of M/s Asian Products;

e) Pass any such other order's which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

The defendant No. 1 in her written statement has not denied that the properties are jointly owned by the plaintiff and the defendants and each have 1/3rd undivided share in the suit properties. Defendant no.2 in her written statement has though disputed the factum of the possession but has not disputed that the plaintiff and the defendants each have the undivided 1/3rd share in the properties. To be more specific, the property no.1 and 2 are jointly by the plaintiff and defendants no.1 and 2 while property no.3 is in fact owned by an undivided partnership firm namely, M/s Asian Products of which the plaintiff and defendants no.1 and 2 are the equal partners. Another correction which has been admitted by all the three parties is that the property no.2 at Vrindawan in fact bears Municipal No.168 and not 167.



Counsels for all the parties submit that since there is no dispute as to the share of the parties in the three parties mentioned, a preliminary decree may be passed.

Since there is no dispute as to the share of the parties, a preliminary decree is passed regarding 1/3rd undivided share of the parties in the following properties:

- (i) H.No.7, Paschim Vihar Extension, New Delhi; a built-up property measuring 300 sq.yards constructed to the extent of Basement, Ground Floor, First Floor And Second Floor and the common terrace
- (ii) Property No.167, a Villa, Baikunth Housing Society, Pushpanjali, Phase-I, Vrindawan (UP); and
- (iii) Property bearing No.A-133, Assam Timber Market, Swam Park, Mundka, New Delhi comprising in Khasra No.49/21/3, measuring 50x256 consisting partly constructed RCC roof and partly constructed with Tin Roof having approximately plot area 1425 sq.yards.

Mr. Ganesh Khemka, Adv. (Mobile No. 9463441118) is appointed as a Local Commissioner. The local commissioner shall visit the properties and shall explore the possibilities of partition by metes and bounds. The fees of the Local Commissioner is fixed at Rs. Two Lakhs, which shall exclude the actual out of pocket expenses. The Local Commissioner may also take the help of an architect to prepare the site plans. The fees of the Local Commissioner, the architect and out of pocket expenses shall be shared by all the parties. The Local Commissioner shall execute the commission after giving prior notice.



List on 08.07.2024.

JANUARY 16, 2024/rb

DINESH KUMAR SHARMA, J