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

+ **EX.P. 17/2016**

VIVAN SOMDUTT & ANR

..... Decree Holders

Through: Mr. Munindra Divewdi, Ms. Divya
Bhalla, Mr. Nishant Varun & Mr.
Bhavitt K. Rastogi, Advs.

Versus

ARJUN SOMDUTT & ORS

..... Judgement Debtors

Through: Mr. Mandeep Singh Vinaik & Ms.
Vandana Sehgal, Advs. for JD-1.
Mr. Dhruv Mohan, Mr. Pradeep
Jangva & Ms. Ritu Sharma, Advs. for
JD-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.04.2017**

1. Execution is sought of the order dated 13th January, 2012 of the Division Bench in FAO(OS) No.701-702/2010 arising from CS(OS) No.206/2007 for partition of property No.B-8, Maharani Bagh, New Delhi, disposing of the appeal in terms of the compromise application filed by the parties.

2. It is the contention of the counsel for the decree-holders i) that the property had already been agreed to be sold and the sale proceeds to be shared as per the Family Settlement between the parties; iii) that the compromise confirmed that the sale will take place and the sale proceeds distributed as per the Family Settlement; iii) that it was however provided that if the sale already agreed to did not go forward, the property will be sold



by the parties at the optimum price available; iv) that the buyer to whom the property had been agreed to be sold, terminated the agreement, hence this petition for execution of the order by sale of the property.

3. The counsel for the judgment-debtor no.2 Ms. Pritha Som Dutt states that judgment-debtor no.2 is also interested in sale of the property.

4. The counsel for judgment-debtor no.1 Mr. Arjun Som Dutt states that objection in the form of reply to the execution petition has been filed. On enquiry, the counsel for the judgment-debtor no.1 states that there is no decree before this Court.

5. That lacuna can be got covered by having the decree drawn up immediately.

6. The counsel for the judgment-debtor no.1 then states that the stamp duty will have to be paid on the decree sheet to be prepared and since the judgment-debtor no.1 is not interested in paying his share of the stamp duty, the decree-holders who are interested in having the decree executed will have to pay the share of the judgment-debtor no.1 also.

7. I have drawn the attention of the counsel for the judgment-debtor no.1 to ***K.N. Khanna Vs. B.K. Khanna*** 2000 (55) DRJ 44 (DB), ***Surendra Kumar Gupta Vs. Prem Gupta*** 2013 (135) DRJ 341 (DB) and ***Radhesh Singh Vs. Vineet Singh*** 214 (2014) DLT 305, where it has been held that on a final decree for partition by sale of the property and distribution of sale proceeds as per the shares declared in the preliminary decree, no stamp duty is liable to be paid and stamp duty is liable to be paid on a final decree for partition by metes and bounds.

8. The counsel for the judgment-debtor no.1 seeks time to study the judgments.



9. The counsel for the judgment-debtor no.1 also states that there is no provision for sale by open auction.
10. Once a decree for partition is by sale of the property and the parties are unable to sell the property themselves, the order / decree cannot be left to be a paper decree and has to be executed and the only mode of execution possible thereof is sale by public auction to enable the sale to fetch optimum price and be transparent.
11. The counsel for the judgment-debtor no.1 has also been cautioned that in such a case, the judgment-debtor no.1 as well as the other parties will also have to bear the cost of the Court Auctioneer.
12. The judgment-debtor no.1 is further cautioned that if he continues to make such frivolous objections, he will be heard further only by directing him either to deposit in this Court his share of the stamp duty which he claims to be payable or it will be ordered that his share of the stamp duty will be deducted out of his share of the sale proceeds with interest.
13. List on 24th April, 2017.

RAJIV SAHAI ENDLAW, J

APRIL 17, 2017

‘gsr’..

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