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

\+ CS(OS) 571/2022, CRL.M.A. 7105/2016, I.A. 21693/2014, I.A. 12886/2016, I.A. 9178/2022 & I.A. 10679/2022

ABHA JAIN .....Plaintiff

Through: Mr. Sanjeev Kumar Baliyan, Mr. Nirbhay Singh, Mr. Yash Yadav and Ms. Jyoti Garg, Advocates with plaintiff in person

versus

SHALI JAIN @ VAISHALI JAIN .....Defendant

Through: Mr. J.P. Sengh, Sr. Advocate with Mr. Shailendra Singh and Mr. Abhyuday Dhasmana, Advocates alongwith defendant no. 1 in person with Mr. Nitin Jain.
Mr. Shiv Charan Garg, Mr. Imran Khan and Mr. Raghav Garg, Advocate for prospective buyer-Mr. Saurav Garg.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 06.08.2024

I.A. 21693/2014 (Application under Order XXXIX Rule 1& 2 filed by the plaintiff) & I.A. 10679/2022 (Application under Order XXXIX Rule 4 filed by the defendant no. 1 seeking vacation of interim order dated 01.06.2022)

1. The present suit has been filed by the plaintiff seeking partition of immovable properties including property bearing House No.5A/27 and No.5A/123, Gali No. 5, located near fire station, Darya Ganj, Delhi – 110092 ('Darya Ganj Property' or 'suit property').

2. This Court vide interim order dated 01.06.2022 had ordered that status quo with respect to title and possession of the suit property shall be maintained till the next date of hearing.

Submission of Defendant no. 1

3. Learned Senior Counsel for the defendant no.1 states that the Darya Ganj Property is owned by three separate and distinct families wherein the defendants nos.1 to 5 have joint ownership rights. He states that plaintiff is claiming through Mr. Vikas Jain, the son of late Shri Mahesh Chand Jain. He states defendant no. 1 is the daughter of late Shri Mahesh Chand Jain.

4. He states plaintiff has no right, title or interest in the shares of Mr. Dinesh Chand Jain and Mr. Ramesh Chand Jain. He states defendant nos. 2 to 5 claim from Mr. Dinesh Chand Jain and Mr. Ramesh Chand Jain.

5. He states that admittedly the plaintiff herein claims a $1/18^{th}$ share in the suit property, which cannot be provided to her in a partition by metes and bounds; and would necessarily require direction of sale in the final decree. He states that since the existing construction in this suit property dates back to 1958-59, the structure is in dilapidated condition. He states that the remaining defendants, who are the residents of the property along with defendant no. 1 have jointly agreed to sell the property to a third-party buyer with whom an agreement to sell dated 30.04.2022 has been entered into.

6. He states that defendant no.1 herein has already undertaken before this Court on 09.04.2024 to deposit and an amount equal to 1/18th share of the sale consideration to secure the claim of the plaintiff *qua* her disputed share in the suit property. He states that vide orders dated 09.04.2024 and 25.07.2024, this Court had permitted the plaintiff to find a buyer for a sale

consideration of Rs.5.90 crores and above. He states on instruction that the defendant no.1 is willing to secure the plaintiff's claim of 1/18th share of a presumptive value of Rs.5.90 crores in these proceedings, without prejudice to the defendant no. 1's stand taken in the written statement. He states this amount would be Rs. 32.7 lakhs. He states he has no objection if this amount is released to the plaintiff.

Submissions of the proposed purchaser and the plaintiff

7. The plaintiff in pursuance to the orders dated 09.04.2024 and 25.07.2024 has brought before this Court one Mr. Saurav Garg as the proposed purchaser, who has expressed his willingness to purchase the suit property for Rs. 5.90 Crores.

8. Mr. Shiv Charan Garg, learned counsel for Mr. Saurav Garg-the proposed purchaser has handed over a pay-order drawn in favour of the Registrar General of this Court for a sum of Rs. 50 lakhs. He states that the proposed purchaser requires six months' time to deposit the entire sale consideration of Rs.5.90 crores. He states Mr. Saurav Garg invests and trades in the securities market on the stock exchange for a livelihood and has a portfolio valued at about Rs. 50-60 lakhs. He states on instructions that in his Income Tax Returns (ITR) filed for the year ending 31.03.2023 and 31.03.2024, Mr. Saurav Garg has shown his gross annual income of Rs. 4 to Rs.5 lakhs.

9. Learned counsel for the plaintiff states that the suit property ought to be sold through Mr. Saurav Garg or a third party and the defendants should not be permitted to sell the same through a private sale. He states that valuation of Rs. 5.90 crores is not the true market value. He states that as per the plaintiff the realisable market value of the suit property is to the extent of

Rs.10-11 crores. He states, therefore, the offer of defendant no. 1 to deposit 1/18th share of Rs. 5.90 crores is not reasonable or acceptable to the plaintiff.

10. Mr. Imran Khan, learned counsel for the proposed purchaser, Mr. Saurav Garg states on instructions that Mr. Saurav Garg is unwilling to purchase the suit property at the price of Rs. 11 crores.

Findings and Analysis

11. In the considered opinion of this Court, the prospective purchaser Mr. Saurav Garg by himself does not have the wherewithal to raise the amount of Rs. 5.90 crores and has been candid with the Court to state that he requires six months' time to raise funds for payment of Rs.5.9 crores from third parties possibly through trading in this bargain. In these circumstances, the bid of Mr. Saurav Garg to purchase the suit property at Rs.5.90 crores is not accepted and the pay order Rs. 50 lakhs offered by him has been returned back.

12. The defendant no. 1 has, however, offered to pay the plaintiff cash equal 1/18th share on the assumed value of Rs. 5.90 crores. The value of the 1/18th share is Rs.32.7 lakhs. The defendant no. 1 states that she is even willing to release this amount to the plaintiff, which offer has been rejected by the plaintiff. The plaintiff, however, has contradicted herself by opposing the offer of the defendant no. 1 to pay her cash equal 1/18th share on the assumed value of Rs. 5.90 crores. This shows that the plaintiff herself is not satisfied with the market value of Rs.5.90 crores offered by her prospective purchaser Mr. Saurav Garg for the suit property. This is an additional reason for not accepting the offer of Mr. Saurav Garg.

13. Subsequently, at the hearing, the plaintiff has contended that the actual market value of the property is Rs.10-11 crores, however the

prospective purchaser Mr. Saurav Garg brought by plaintiff to the Court is unwilling to buy at this value of Rs.10-11 crores. Thus, the market value of Rs. 10-11 crores proposed by the plaintiff for the suit property has no existing buyer before the Court.

14. The plaintiff contends that the offer of the defendant no. 1 to deposit $1/18^{th}$ share of the assumed value of Rs. 5.90 crores is prejudicial to the plaintiff as the market value is Rs. 10-11 crores.

15. This Court has considered this last submission of the plaintiff qua the market realisable value of the suit property. The defendant no.1 has fairly stated that the circle rate of the suit property as of date, is to the tune of Rs.5.70 Cr. There is a presumption that property fetches market value higher than the circle rate. Since, the plaintiff herself has assessed the current market value at Rs. 11 crores, to secure the interest/claim of the plaintiff, defendant no. 1 is directed to deposit an amount equal to $1/18^{th}$ share of Rs. 11 Cr. with the Registrar General of this Court within two weeks. This amount of $1/18^{th}$ share amounts to Rs. 61 lakhs.

16. In the opinion of this Court, since the share of the plaintiff in the property as per her admitted claim is $1/18^{th}$, the final decree in the suit would be for sale of the property and since the defendants, who are the joint owners are already agreeable to sell the property, there is no impediment in permitting the sale as the plaintiff's claim/interest has been duly secured at the market price proposed by her.

17. Learned senior counsel for defendant no. 1 states that it is disputed that the market value of the suit property is Rs. 11 crores. He states, however, without prejudice to the said contention, the defendant no. 1 shall comply with the direction of deposit of Rs. 61 lakhs to await the outcome of

the trial.

18. At this stage, learned counsel for the plaintiff contends that the plaintiff is opposed to the private sale. He states that the property should be either sold through public auction or the plaintiff should be permitted to reside in the suit property.

19. The opposition of the plaintiff to private sale by the defendants is without any merits since her $1/18^{th}$ share on the maximum price of Rs. 11 crores suggested by her has been secured by the aforesaid direction.

20. The alternate submission of the plaintiff that she wishes to reside in the suit property is also without any merits. It is a matter of record that as per the plaintiff she last resided in this property in the year 2006; this suit was filed in 2014, the plaintiff has thus, not resided in this property for the last more than 18 years and has no familial ties with defendants nos. 2 to 5 who are currently residing in this property. This argument is any ways a red herring as the plaintiff agreed to the sale of the suit property on 09.04.2024 and maintained the stand for sale on 25.07.2024 and even earlier today in the hearing. She in fact, has brought before this Court a prospective purchaser to buy the property. Therefore, the opposition to the sale is without any merits. This plea is therefore, hereby rejected.

21. As noted hereinabove, since all the joint owners i.e., defendant nos. 1 to 5 have decided to sell the property and a partition by metes and bounds is not possible considering the multiple owners, the sale of the suit property is in inevitable and therefore, the prayer of the plaintiff that she should be permitted to reside in the property cannot be acceded to.

22. Since, the plaintiff is unwilling to accept this amount, the registry is directed to deposit the said amount of Rs. 61 lakhs in maximum interest-

bearing fixed deposit account to abide by the final outcome of the suit.

23. It is clarified that the directions to the defendant no.1 to deposit the amount of Rs.61 lakhs is not an expression on the merits of the claim of the plaintiff of the suit of her 1/18th share in the suit property or her claim with respect to the current market value of the suit property, which will be decided at trial.

24. Subject to the defendant no.1 depositing the amount of Rs. 61 lakhs within two weeks from today i.e., on or before 20.08.2024, the interim order dated 01.06.2022 shall stand vacated. Further, the suit property shall be free from the rigours of Section 52 of Transfer of Property Act, 1882 and defendants nos.1 to 5 will thereafter be at liberty to deal with the suit property in any manner they deem fit.

25. The defendant no.1 will place on record a copy of the sale deed after its execution.

26. With the aforesaid directions, both these applications stand disposed of.

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27. List for framing of issues on 22.10.2024.

28. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

AUGUST 6, 2024/*Mk*/AKT