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

\+ **CS(OS) 623/2022, I.As. 16607/2022, 16608/2022, 21709/2022, 24497/2023 & 25133/2023**

NUPUR RUSTAGI & ORS. ..... Plaintiffs

Through: Mr. Hari Kishan, Advocate with Mr. Akarsh Sharma, Advocate (M: 9818038911).

versus

PRABODH KUMAR RUSTAGI & ORS. ..... Defendants

Through: Mr. Jugal Wadhwa, Mr. Raghav Goyal and Mr. Rishab Bhalla Advocates for D-1 and 2 (M: 9958500348).

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 01.02.2024

1. This hearing has been done through hybrid mode.

2. The present suit seeks partition and related reliefs concerning the estate of the late Smt. Sheela Devi, who was the maternal grandmother of Plaintiffs No. 1, 2, and 4, and the mother-in-law of Plaintiff No. 3. As per the plaint, the mother of Plaintiffs No. 1, 2, and 4 passed away intestate on 12th July 2019, leaving the Plaintiffs as her Class-I legal heirs. Smt. Sheela Devi, who owned various movable and immovable properties detailed in paragraph 4 of the plaint, died intestate on 28th January 2020, leading the Plaintiffs to claim a 1/4th share in her estate.

3. According to Defendant No. 2, Smt. Sheela Devi executed a Will on 20th January 2020, bequeathing all three immovable properties to Defendant No. 2. It is stated that based on the said Will, Shop No. G-2 on the ground

floor at Plot No. 11, Savitiri Sadan-I, Preet Vihar, Delhi, has been sold, and a sale deed for the third floor of the property at G-324, Preet Vihar, Delhi, has been executed and registered.

I.A. 25133/2023 (for directions)

4. This is an application filed by Defendant Nos. 1 and 2 seeking permission to sell the property bearing No. G-324, Preet Vihar, Delhi-110092 *(hereinafter 'subject property')*, in which the Plaintiffs claim a 1/4th interest. The submission of Mr. Jugal Wadhwa, ld. Counsel for the Defendants, is that an equitable mortgage was created by the wife of Defendant No. 1 with Punjab National Bank in 2016, and the subject property is likely to be taken over by the said Bank under the proceedings instituted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(hereinafter, 'SARFAESI Act')*.

5. Thus, it is prayed that the Defendant No. 2 may be allowed to sell one of the floors of the subject property to repay the outstanding loan. Ld. Counsel for the Plaintiffs submits that Defendant Nos.2's conduct is *mala fide* as they did not disclose to the Court in the written statement or earlier that a loan creating equitable mortgage over the subject property was taken from the Bank.

6. Ld. Counsel for the Plaintiffs further submits that the Defendants have sufficient properties in their name to be able to satisfy the equitable mortgage and subject property ought not be allowed to be sold. However, when the Court posed a query to the ld. Counsels for the parties, upon instructions from Mr. Mukesh Kumar, father of Plaintiff Nos. 1 and 2, it was

submitted that the Plaintiffs would agree if the entire subject property is sold and one-fourth of the sale consideration is deposited with the Court.

7. Mr. Wadhwa, ld. Counsel under instructions from Defendant Nos. 1, who is present in Court, submit that Defendant No. 1 undertakes as under:-

i) that the subject property shall be put to sale and one fourth of the sale consideration received shall be deposited with the worthy Registrar General of this Court towards the $1/4^{th}$ share of the Plaintiffs as claimed.

ii) The entire loan of Punjab and National Bank shall be paid by the Defendant No.1.

8. In view of the undertaking given and with the consent of parties, it is directed that the said property is permitted to be sold.

9. Let the sale of the ground floor, first floor and second floor of the subject property being ***'G-324, Preet Vihar Delhi-110092'*** be conducted through the Railtel Corporation Limited after publishing a proper sale notice.

10. After concluding the sale, one fourth of the sale consideration shall be deposited by the said agency with the worthy Registrar General. The said amount shall be kept in a fixed deposit in an auto renewal mode. The Plaintiffs are free to move an application seeking release of the said amount which shall be considered on its own merits. The sale shall not affect the stand of the Defendants on merits that the Plaintiff are not entitled to any share in the property.

11. The application is disposed of.

CS(OS) 623/2022 and I.A. 16607/2022, 16608/2022, 21709/2022, 24497/2023

12. Let the pleadings be completed in all the applications in the meantime.

13. Issue notice in ***I.A. 24497/2023*** to Punjab and National Bank through nominated counsel – ***Mr. Santosh Kumar Rout, Advocate (Mob. No.9990432878)***. If the PNB wishes to seek any modification of this order, they are free to approach this Court.

14. Let the present order be communicated to the Railtel Corporation Limited for compliance to the following officials:

Mr. Navneet Mishra (Mob. No.+91 9355030630)

Mr. Amrendra Kumar (Mob. No. +91 8448288980).

15. List before the Joint Registrar on 15th February, 2024.

16. List for hearing the other applications on 20th May, 2024 before Court.

PRATHIBA M. SINGH, J.

FEBRUARY 01, 2024

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