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

+ **CS(OS) 726/2014**

GYAN PRAKASH GUPTA

..... Plaintiff

Through: Mr. Pawan Sharma, Advocate.
(M:9818156973)

versus

VIJAY PRAKASH & ORS

..... Defendants

Through: Mr. M. Tarique Siddiqui, Ms. Reetika Gupta and Mr. Aamir Zaidi, Advocates for D-1. (M:9821710680)
Ms. Rashmi Jain and Ms. Archana Gupta, Advocates for D-2 to 11. (M:9268495137)
Mr. Shashank Khurana, Advocate for D-18. (M:9711560992)
Ms. Savni Dutt and Ms. Nilofar Absar, Advocates for D-36. (M:9561510110)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **14.08.2018**

1. This is a suit for partition filed by the Plaintiff who claims to be a legal heir of Sh. Maghanand. He was the owner of property bearing No.A-35, Second Floor, Kailash Colony, New Delhi-110048. Sh. Maghanand had five sons and three daughters namely; Sh. Vijay Prakash, Sh. Ramesh Chand Gupta, Sh. Vinod Gupta, Sh. Hari Om Gupta, Smt. Manorama Devi, Smt. Sarla Bansal and Smt. Santosh Bansal. Out of the five sons, four sons are deceased, except the Plaintiff. Their legal heirs have all been brought on record. Defendant No.18, M/s Saboori Developers & Promoters Private Limited, claims to be the subsequent purchaser of 60% share of the suit



property from one of the deceased brothers i.e. Sh. Vijay Prakash. According to Defendant No.18, Sh. Vijay Prakash owned 50% of the suit property and also inherited 10% after the death of Shri Maghanand. Defendant No.18 relies upon the sale deed dated 23rd April, 2014, registered on 19th June, 2014, by which the said Defendant claims to have purchased 25% share of 60% the suit property. Defendant No. 18 further claims that an Agreement to Sell dated 8th July, 2014 was also entered into by it, by which a further 35% of the 60% was agreed to be sold to it for consideration of Rs.5.5 crores. Out of Rs.5.5 crores, the Defendant No. 18 has only paid Rs.50 lakhs to Defendant No.1. According to the documents on record, the remaining Rs.5 crores is yet to be paid. Learned counsel appearing for Defendant No.18 submits that he wishes to seek instructions as to how much is due to be paid.

2. Considering the nature of the dispute and the claim of Defendant No.18 that it has 60% share in the property, the entire sale consideration ought to be deposited before issues are framed inasmuch as the case of the said Defendant is based on the sale deed and the Agreement to Sell. If the Defendant No.18 has not paid the entire sale consideration as per the Agreement to Sell, its claim to 60% of the suit property would not be liable to be entertained.

3. Learned counsel appearing for the legal heirs of Defendant No.1 is also directed to seek instructions as to what is the total sale consideration received from Defendant No.18.

4. List on 5th September, 2018.

PRATHIBA M. SINGH, J.

AUGUST 14, 2018

Rekha