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ORDER SHEET

CS/82/2017

IA No. GA/1/2017 (Old No. GA/1300/2017), GA/13/2022

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SURJIDHAR MULLICK
-VS-
GUNADHAR MULLICK & ORS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : August 30, 2023.

Appearance:

Mr. Kaustav Chandra, Adv.
Mr. Souvik Sen, Adv.
Ms. Aditi Dutta, Adv.
...for the plaintiff

Mr. Aritra Basu, Adv.
Mr. Abhik Chitta Kundu, Adv.
...for the defendant no.1

Mr. Lal Ratan Mondal, Adv.
...for the defendant nos. 2A and 2B

Mr. Deb Kumar Chandra, Adv.
...for the defendant no. 3A

Mr. Pradip Kr. Ghosh, Adv.
...Commissioner of Partition/Special Officer

The Court: Counsel for the respective parties are present.

In terms of the order passed by this Court dated 2nd August, 2023, the Special Officer has submitted report on 16th August, 2023 wherein it is stated that on 12th August, 2023 a meeting was held along with the plaintiff, defendant no.1, defendant nos.2A and 2B as well as the respective counsel for the parties. In the said meeting it was decided that:

- (a) The parties are agreeable to distribute gold ornament(s) amongst themselves without selling those to third party.
- (b) But, in the event, any of the ornament(s) cannot be distributed in accordance with the valuation and the shares of the parties, the particular ornament(s) be sold to third party and sale proceeds be distributed amongst themselves in accordance with their share, subject to direction by this Hon'ble Court.

Today when the matter is called, the counsel for the plaintiff, defendant no.1, defendant nos.2A and 2B have submitted that they have no objection with regard to the report submitted by the Special Officer.

Counsel for the defendant no.3 is present and submits that the defendant no.3 is not having any claim with regard to the said gold ornament(s) or any jewellery and she also has no objection for acceptance of the report submitted by the Special Officer.

Learned counsel for the respective parties submits that the defendant nos. 3 to 6 are not having any claim in the said gold ornament(s)/jewellery in terms of the probate granted by the City Civil Court, Kolkata on April 21, 1997.

In view of the submission made by the counsel for the respective parties, this Court finds that the Special Officer can be directed to distribute the gold ornament(s)/jewellery amongst the plaintiff, defendant no.1 and defendant nos. 2A and 2B and in the event the ornament(s)/jewellery could not be distributed, the said ornament(s)/jewellery can be sold in the open

market and the sale proceeds be distributed amongst the plaintiff, the defendant no.1 and the defendant nos. 2A and 2B as per their shares.

For the purpose of disposing of the gold ornament(s)/jewellery by the Special Officer, this Court finds that the following procedures are to be followed:

- (a) The Special Officer shall take the assistance of the Valuer at the time of distribution of the gold ornament(s)/jewellery amongst the plaintiff, the defendant no.1 and the defendant nos.2A and 2B;
- (b) At the time of distribution of the gold ornament(s)/jewellery, the Special Officer with the help of the Valuer shall take note of the weight of each gold ornament(s)/jewellery which either of the parties are interested to take the same;
- (c) In case if one of the jewellery/ornament(s) is claimed by more than one party, the Special Officer shall adopt the lottery process of the said jewellery and the person who will get the preference in the lottery will get the said ornament(s)/jewellery;
- (d) In case if any of the parties has got less weight of the jewellery/ ornament(s) than the other party, the ornament(s)/jewellery which is required to be sold in the open market which is not distributed amongst the parties, the said amount will be paid to the concerned party who has got less of the valuation of the gold ornament(s)/jewellery;

- (e) After completion of the process with regard to the distribution of gold ornament(s)/jewellery amongst three parties, the remaining gold ornament(s)/jewellery, if any, which has not been distributed amongst the parties, the Special Officer shall sell the same in the open market with the assistance of the Valuer and in presence of all the three parties. The amount which is being received by the Special Officer, shall be distributed in three equal share to the three parties subject to if any less amount is to be given to the party who has received the less value of the gold ornament(s)/jewellery amongst them.

The parties i.e. plaintiff, defendant no.1 and defendant nos. 2A and 2B along with their respective advocate shall appear before the Special Officer and shall not bring any third party or any of the legal heirs in the said process.

If any of the parties are not able to be present in person, the said party can give a written authorization to any of his heirs or relatives to be present before the Special Officer or Valuer for distribution of the said gold ornament(s)/jewellery.

The Special Officer is requested to complete all the formalities within a period of four weeks from the date of receipt of this order.

The remuneration of the Special Officer is fixed at Rs.1,00,000/- and shall be paid by all the three parties above in three equal shares as per their mutual consent. It is made clear that the share of defendant nos. 2A and

2B shall be one share. The remuneration of the Valuer shall be paid by all the three parties as per the remuneration fixed by the Special Officer.

If the Special Officer is having any grievance with regard to the remuneration; the same shall be placed before this Court on the next date fixed.

The Special Officer is directed to submit the report before this Court on 12th October, 2023 at 1:00 pm.

(KRISHNA RAO, J.)

sp3