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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS/136/2023

KAILASH NEVATIA
VS
SHIV KUMAR NEVATIA AND ANR

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: 27th January, 2025.

Appearance:

Mr. Nirmalya Dasgupta, Adv.

Mr. Dibanath Dey, Adv.

Ms. Pallavi Pain, Adv.

...for the plaintiff.

Mr. Rohit Banerjee, Adv.

Mr. Asif Sohail Tarafdar, Adv.

Mr. I. Munshi, Adv.

...for the defendants.

The Court : Mr. Nirmalya Dasgupta, learned Advocate, is appearing for the plaintiff.

Mr. Rohit Banerjee, learned Advocate, is appearing for the defendants.

Plaintiff-witness is present and cross-examination resumed.

During the cross-examination, it is submitted by the learned counsel for the defendants that the plaintiff has filed the present suit for partition of the suit schedule property and the parties to the suits are admitted their shares in the plaint as well as in the written statement.

Counsel for the defendants submits that as the parties have admitted their shares, accordingly, a preliminary decree can be passed.

Learned counsel for the plaintiff submits that the plaintiff has filed the suit for partition and if the defendants are agreeing for the preliminary decree in terms of prayers (a) and (b), the plaintiff has no objection for passing the preliminary decree by this Court.

Considering the submissions made by the counsel for the respective parties, this Court finds that the plaintiff has filed the present suit praying for partition of the suit schedule property which is as follows:-

**THE SCHEDULE OF THE PREMISES NO. 76, BENTINCK STREET,
KOLKATA-700001**

ALL THAT the undivided two-third share or interest in the two storied brick-built messuage, tenement, dwelling house, hereditaments and premises together with the piece or parcel of land thereunto belonging and whereon or on part whereof the same is erected and built containing by estimation an area of Twelve Cottahs and Eight Chittaks and Thirty One Sq. Ft. of land be the same a little more or less situate lying at and being the Premises No. 76, Bentinck Street, Calcutta being "B" 263 Block No. 16 of the South division of the town of Calcutta and butted and bounded by:

On the North: Partly Premises No. 77, Bentinck Street, Calcutta and partly by Premises No. 77/2, Bentinck Street, Calcutta.

On the South: Partly Premises No. 75, Bentinck Street, Calcutta and partly by Premises Nos. 5 and 7, Weston Street, Calcutta.

On the East : By Premises No. 9, Weston Street, Calcutta.

On the West: By Bentinck Street, Calcutta.

THE SCHEDULE OF THE PREMISES NO. 123A, LENIN SARANI,
KOLKATA- 700013.

ALL THAT the undivided one-third share or interest in the brick built house together with rent land containing an area of 17 Cottahs 15 Chittaks and 14 Sq. Ft. to be the same a little more or less situate lying at and being premises No. 123A, Lenin Sarani (formerly premises No. 123, Dhuramototalla Street), in Holding No. 13, Block No. 1 in the South Division of the town of Calcutta and butted and bounded by:

On the North: Premises No.16/1, Creek Row, Calcutta

On the South: Lenin Sarani (formerly Dharamtolla Street)

On the East: Premises No. 122, Lenin Sarani (formerly Dharamtolla Street)

On the West: Premises No. 124, Lenin Sarani (formerly Dharamtolla Street)

The plaintiff in the plaint has categorically mentioned with regard to the shares of the plaintiff and the defendants at paragraphs 8, 9 and 10 of the plaint which reads as follows:-

“8. The plaintiff states that apart from the said property stated at 76, Bentinck Street, Kolkata- 700001 the plaintiff out of his own fund had purchased 1/3rd undivided share or interest in respect of another property being premises No. 123A, Lenin Sarani, Kolkata-700013 by virtue of a registered deed of conveyance dated June 21, 1979 and the said property duly consist of a brick-built house together with an area of 17 Cottahs 15 Chittacks and 14 sq. Ft. be the same a little more or less of land lying and situated at premises No. 123A, Lenin Sarani (formerly premises No. 123, Dharmatala Street) Kolkata-700013 (hereinafter referred to as the second property), duly situated within the aforesaid jurisdiction. A copy of the said registered deed of conveyance dated June 21, 1979 is annexed hereto and marked with the Letter – “G”. The Plaintiff treats of the same as a part of the Plaint.

9. *The plaintiff states that the defendant No. 1 by a registered deed of conveyance dated June 21, 1979 also purchased 1/3rd undivided share and/or interest in respect of the said property situated at 123A, Lenin Sarani, Kolkata- 700013 being the second subject property herein, duly situated within the aforesaid jurisdiction. A copy of the said registered deed of conveyance dated June 21, 1979 duly executed in favour of the Defendant No. 2 is annexed hereto and marked with the Letter- "H". The Plaintiff treats of the same as a part of the Plaint.*

10. *The plaintiff states that similarly the Defendant No. 2 also purchased 1/3rd share in respect of the said second property herein situated at 123A, Lenin Sarani by virtue of a registered deed of conveyance dated June 21, 1979. A copy of the said registered deed of conveyance dated June 21, 1979 is annexed hereto and marked with the Letter – "I". The Plaintiff treats of the same as a part of the Plaint."*

In the written statement also the defendants have not denied with respect of their shares in the property as described by the plaintiff and as such, this Court finds that the plaintiff has filed the suit for partition. Prayers (a) and (b) are with regard to the preliminary decree. As the parties to this suit are agreed to their respective shares in the suit property and thus, this Court did not find any impediment to pass a preliminary decree as per the admitted share of the parties in terms of prayers (a) and (b).

The plaintiff is entitled to get 2/3rd share and the defendants are entitled to get 1/6th share each in the property mentioned in prayer (a) of the plaint and the plaintiff and the defendants are entitled to get 1/3rd share each in the property mentioned in prayer (b) of plaint.

Accordingly, preliminary decree in terms of prayers (a) and (b) of the schedule properties as mentioned above is granted.

The Department is directed to draw-up a preliminary decree as early as possible.

The plaintiff submits that the plaintiff is not claiming any account in terms of prayer (c) but the defendants are claiming the accounts, thus, for the purpose of account a Special Officer is required to be appointed.

Let the matter appear on 30th January, 2025 as “To Be Mentioned” only to ascertain who will pay the remuneration of the Special Officer if this Court will appoint a Special Officer to ascertain accounts in terms of prayer (e) of the plaint as prayed for by the defendants.

This Court has passed a preliminary decree on consent of the parties and as such, the evidence of the parties is closed.

(KRISHNA RAO, J.)