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

Date of Decision: 16th May, 2024

+ **CS(OS) 234/2020 and I.A. 7450/2020, 13396/2021, 19754/2022**

NAWABUDDIN

..... Plaintiff

Through: Mr. M.S. Khan, Ms. Shaziya and Mr. Firozuddin, Advs. along with plaintiff (M- 8810382404)

versus

SALAHUDDIN & ANR.

..... Defendants

Through: Mr. Abdul Jameel Khan, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present is a family dispute seeking partition as also relief of separate possession and injunction with respect to the property bearing no. B-7, Nizamuddin West, New Delhi, admeasuring 200 square yards (hereinafter referred as the '*suit property*'). The Plaintiff and the Defendants are brothers in the present case.
3. As per the plaint, the Plaintiff and Defendant Nos. 1 & 2 are the co-owners of the suit property. The property was purchased vide a registered sale deed dated 21st December, 1975. The property has since then been converted as a freehold property in the name of the Plaintiff and the Defendant Nos.1 and 2. It is further stated that the other brothers and sisters of the Plaintiff have relinquished their respective shares which they had inherited from Late Smt. Amina Begum, mother of the Plaintiff and Defendant Nos. 1 and 2 and hence, they became the exclusive owner of the



said property.

4. The preliminary decree has already been passed in this matter vide order dated 22nd September, 2022, in the following terms:

“1. The present suit has been filed seeking relief of partition along with other consequential reliefs in respect of property bearing No.B-7, Nizamuddin West, New Delhi admeasuring 200 sq. yds (suit property). The plaintiff claims 1/3rd share in the suit property. The Conveyance Deed in respect of the suit property is in the joint names of the plaintiff and defendants no.1 and 2, who are brothers.

2. In the written statement, this position has been admitted on behalf of defendants no.1 and 2. Accordingly, the counsels for both the sides submit that the preliminary decree be passed in terms of the above.

*3. **In view of the above, a preliminary decree of partition is passed in respect of the suit property declaring the share of the plaintiff, defendants no.1 and 2 as 1/3rd each in the suit property.***

4. Decree sheet be drawn up.

5. Accordingly, Mr. Akhil Kumar Kulshrestha, Advocate (Mobile No. 9999933215) is appointed as the Local Commissioner. The Local Commissioner shall visit the suit property to ascertain if the suit property can be divided by metes and bounds and if not, then suggest the mode of partition. The following directions are passed in this regard:

I. The Local Commissioner after giving due notice to the counsels for the parties shall visit the suit property along with the parties and/or the counsels appearing on behalf of the parties and prepare a Report ascertaining, if the suit property can be divided by metes and bounds and if not, then suggest the mode of partition.

II. The parties and/or the counsels appearing on behalf of the parties shall render full assistance to the Local Commissioner for executing the present commission.



III. *The fees of the Local Commissioner is fixed at Rs. 1,50,000/- plus out of pocket expenses, to be borne equally by the plaintiff, defendant no.1 and defendant no.2.*

IV. *The Local Commissioner shall file his Report within four weeks.*

6. *List on 6th February, 2023.*”

5. The names of the Plaintiff and Defendant Nos. 1 and 2 in this suit are Mr. Nawabuddin, Mr. Salahuddin and Mr. Qayamuddin respectively.

6. On the last date, this Court had observed that none was appearing for Defendant Nos. 1 and 2. An application under Order I Rule 10 CPC being **I.A.19754/2022** was moved by Mr. Jamaluddin and Mr. Anasuddin who had claimed that they ought to be impleaded before any decree be passed as the suit property was purchased by their father. Adjournment was sought in the matter on the said date. Parties were directed to remain present in Court today.

7. In the meantime, Mr. Sarfaraz Khan has appeared for Defendant No.2 and has filed an affidavit of his client to the following effect:

“2. *That I state and declare that the property bearing No.B-7, Nizamuddin West consisting of three floors was purchased by my father from his own funds in the name of Nawabuddin, Salauddin, Qayamuddin and my mother Late Smt. Amina Begum vide Sale Deed dated 21.12.1975.*

3. *That I state that entire family including all the brothers, sisters and my parents shifted to this place from old Delhi and started living together. It is pertinent to state that none of the brothers and my mother or anybody else had contributed towards the purchase price of the property bearing No. B-7, Nizamuddin West, New Delhi. The entire payment was made by my father from his Saving account which is*



also mentioned in the sale deed out of his own savings and earnings, although the property was purchased in the name as stated hereinabove.

4. That my father has also purchased another property after this i.e. property bearing No. G-30, Nizamuddin West, New Delhi in his own name out of his own savings and earnings.

5. That it is significant to mention that when the property bearing No. B-7, Nizamuddin West was purchased all the brothers which includes six brothers and sisters shifted to this place and plaintiff and the defendants in the present case were studying at that time and therefore, there was no question of contributing anything towards the purchase price of the subject matter as claimed in the present suit. It is also pertinent to mention here that the property bearing No. G-30, Nizamuddin West, New Delhi was bequeathed in the name of other three brothers vide registered Will. It is further stated that this fact was known to all of us.

6. That it is further stated that I have executed Exchange Deed with Mr. Jamaluddin my brother by exchanging my share in the property bearing No. B-7, Nizamuddin West, New Delhi against his share in the property bearing No. G-30, Nizamuddin West and at present Jamaluddin is residing in B-7, Nizamuddin West, New Delhi and I am residing in G-30, Nizamuddin West which fallen to the share of Jamaluddin.

8. As per the above affidavit, Mr. Qayamuddin - Defendant No.2 has exchanged his share in Property bearing no.B-7, Nizammuddin West, New Delhi with Mr. Jamaluddin share in G-30, Nizamuddin West, New Delhi. Thus, Defendant No.2 now does not claim any right and has exchanged his share with Mr. Jamaluddin. Thus, the share of Defendant No.2 would now vest with Mr. Jamaluddin.



9. The Court has perused the Local Commissioner's report in this matter. The Local Commissioner after inspecting the property has given the following recommendations:

*“At the outset, if we explore the possibility of physical partitioning of the Suit Property by metes and bounds, then in the assessment of the undersigned, the same is very much possible. Since there are three parties to the present suit and the Suit Property comprises of three separate floors which are all within the boundary of the Suit Property and almost similar in design from outside, **the Suit Property may be partitioned floor wise, with the plaintiff, defendant no. 1 and defendant no. 2 getting one floor each as their respective shares. The terrace can be divided into three equal parts and each such part can be designated as the share of one party. Likewise, the basement can also be divided into three equal parts and each such part can be designated as the share of one party.**”*

However, considering the fact that there is no consensus between the plaintiff on one hand, and the defendants on the other, regarding the floor that each of them would like to take possession of, therefore in order to secure the interest of all concerned parties to the present suit, the Suit Property may be sold to a third party, and its sale proceeds may be divided equally amongst the plaintiff, defendant no. 1 and defendant no. 2 herein. In the alternative, if any of the parties to the present suit wants to purchase the entire Suit Property, it can do so, if the other parties agree to it, by paying a mutually agreeable amount to the selling party(ies) selling. Their shares. This proposal, however, is only a suggestion from undersigned, and the final call to this effect rests with this Hon'ble Court to pass appropriate directions.”



10. It is to be noted that as per the Local Commissioner, the Plaintiff and Defendant Nos.1 and 2 could get one floor each in the suit property and the terrace and basement would be commonly used. However, there was no consensus as to who should get the ground floor. The relevant paragraph of the said report is extracted herein below:

“13. Once the entire Commission in respect of the Suit Property was over, the undersigned asked all concerned parties herein, through their respective counsels, to submit their proposals regarding the expected mode of partition. Mr. Alamgir, counsel on behalf of defendants stated that both defendant no. 1 and defendant no. 2 would want to have a floor wise partition in the order of age wise seniority. According to Mr. Alamgir, defendant no. 1 being the eldest brother can take the ground floor, defendant no. 2 can take the first floor, and plaintiff being the youngest brother can take the second floor. Basement and terrace can be put to common use by the plaintiff and defendants. Mr. Khan, counsel for the plaintiff on the other hand stated that the said proposal by the defendants is not acceptable to the plaintiff since the plaintiff wants the ground floor for himself.”

11. One of the suggestions was that Mr. Salahuddin could take the Ground Floor, Mr. Qayamuddin the First Floor and Plaintiff the Second Floor. However, in respect of the claim to the Ground Floor, there is a dispute and there was no consensus so finally the Local Commissioner suggested that the property could be sold to a third party and the sale proceeds would be divided equally amongst the parties.

12. After having considered the submissions today, as also the report of the Local Commissioner, there is clearly no consensus between the parties.



In view thereof, there is no other option but to direct the property being No. B-7, Nizamuddin West, New Delhi to be auctioned through M/s Railtel. The following persons are accordingly held to be the co-sharers of the suit property in the following shares:

- Plaintiff - 1/3rd
- Defendant No.1 - 1/3rd
- Defendant No.2 - Qayamuddin now replaced by Mr. Jamaluddin -1/3rd

13. Mr. Jamaluddin shall now be impleaded as Defendant No.3. Let the amended memo of parties be filed within one week.

14. The auction of the property be carried out through M/s Railtel Corporation Ltd. For the said purposes, the same Local Commissioner- Mr. Akhil Kumar Kulshrestha will coordinate with M/s. Railtel for enabling the sale of the property. Let all the three parties *i.e.*, the Plaintiff, Defendant No.1 - Salahuddin and Mr. Jamaluddin who now claims share in the Defendant No.2's share, place on record their respective valuations of the suit property, so that the Court can proceed further and decide the reserve price. The Local Commissioner shall also ascertain the market value of the property and on the said basis communicate the reserve price to M/s. Railtel. Before confirmation of the sale, the report be placed before this Court by M/s. Railtel within three months, post which the final decree will be passed.

15. The fee of the Local Commissioner is fixed at Rs. 1,50,000/- plus out of pocket expenses, to be borne equally by Plaintiff, Defendant Nos. 1 and 3.

16. The affidavit filed by Defendant No.2 is taken on record.

17. Copy of the order be communicated to Mr. Kulkreshtha, the Local Commissioner, on his mobile number being M:9999933215, as also to M/s.



2024 : DHC : 4056



Railtel at the following detail of the official:

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

18. List on 23rd August, 2024.

**PRATHIBA M. SINGH
JUDGE**

MAY 16, 2024

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