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

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**CM(M) No. 618/2011**

**May 20, 2011**

AMARJIT KAUR

..... Petitioner

Through: Mr. S.N.Kumar, Sr. Adv. with  
Mr. K.B.Soni, Adv.

VERSUS

GURPREET SINGH & ORS.

..... Respondents

Through: Mr. Inder Bir Singh, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**VALMIKI J. MEHTA, J (ORAL)**

1. The present petition under Article 227 of the Constitution of India is a stark reminder of the fact that endemic delays in litigations are sought to be taken advantage of by unscrupulous litigants. I begin with this sentence, inasmuch as the facts narrated here-in-after show as to how a plaintiff who has obtained a preliminary decree way-back on 21.1.1983, i.e. over 27 years back has been frustrated in getting benefits of his 50% share in the disputed property, and a 50% share which is not disputed by any one till today.

2. The property in question is property no.67/7, Behind Radio Colony, Kingsway Camp, Delhi. This property belonged to two brothers, Pritam Singh and Harbhajan Singh. Pritam Singh, one brother after the

death of his other brother Harbhajan Singh filed a suit (hereinafter the subject suit) claiming a 50% share in the property and therefore asking for a decree for partition with respect to his 50% share in the property. Pritam Singh admitted that the other 50% share belonged to the branch of his late brother Sh. Harbhajan Singh. This suit which was filed in 1972 was ultimately decreed ex parte and a preliminary decree passed on 21.1.1983. The effect of the preliminary decree is to grant 50% share to Sh.Pritam Singh and 50% share to the branch of late Sh. Harbhajan Singh. Pritam has expired during the pendency of the litigation and his branch is now represented by his son, respondent no.1 herein.

3. It is thereafter that the travails of Sh. Pritam Singh began. One Jatinder Pal Singh, nephew of Harbhajan Singh claimed that he owned half of the 50% share of the Harbhajan Singh in the suit property by virtue of a Will dated 15.9.1964 and which he claimed was probated. Jatinder Pal Singh also died during the litigation and is now represented by the appellant, his widow. Jatinder Pal Singh made an application in the subject suit after passing of the preliminary decree for being impleaded as a party under Order 1 Rule 10 CPC. The Trial Court impleaded him by an order of the year 1986. How of course would his impleadment be in any manner material I fail to understand, inasmuch as, the preliminary decree had already been passed declaring the share of Pritam Singh at 50% and the branch of Harbhajan Singh at 50%. An application was also filed by Sh. Jatinder Pal Singh in the year 2005, i.e. much after passing of the preliminary decree in the year 1983 for recalling of the preliminary decree

on the ground that a fraud was played on the Court and the branch of Harbhajan Singh was not the owner of the entire share of Harbhajan Singh, inasmuch as, Jatinder Pal Singh owned half of the 50% share of Harbhajan Singh on the basis of the Will dated 15.9.1964. This application is stated to be pending in the Trial Court. There were from 1983 till 2007 a series of litigations initiated by the said Sh. Jatinder Pal Singh and which facts are therefore now necessarily to state. Firstly, Jatinder Pal Singh filed a suit for declaration, partition etc., impleading as defendants in that suit not only the natural legal heirs of Harbhajan Singh, but also Pritam Singh (plaintiff of the subject suit) as a party and in which suit it was prayed that the preliminary decree dated 21.1.1983 be set aside as having been obtained by fraud. This suit was filed in the year 1985. This suit was dismissed in default 4 times and thereafter restored 4 times and subsequently vide order dated 17<sup>th</sup> December, 2009, on the prayer of the legal heirs of Jatinder Pal Singh, the said suit was adjourned sine die as the legal heirs of Jatinder Pal Singh claimed that they were to pursue proceedings in the subject suit for setting aside the preliminary decree.

4. Jatinder Pal Singh filed one more civil suit being Suit No.543/2005 in the original side of this Court. This suit was dismissed by a learned Single Judge of this Court on an application under Order 7 Rule 11 CPC being IA No.6139/2005 vide order dated 13.8.2008 observing that once an earlier suit of Sh. Jatinder Pal Singh challenging the preliminary decree dated 21.1.1983 is already pending, a second suit cannot lie. The decision of the learned Single Judge of this Court dated 13.8.2008 was

taken in appeal and which appeal was also dismissed in RFA (OS) No.17/2008 vide judgment dated 19.12.2008.

5. Now the facts which have resulted in the present petition. The present petition concerns an application which was filed by Smt. Amarjit Kaur, widow and legal heir of Jatinder Pal Singh, and by which application filed on 27.10.2007 a prayer was made for setting aside/recalling of preliminary decree passed way back on 21.1.1983. This application (hereinafter the subject application) has been dismissed by the impugned order dated 17.2.2011 and hence the present petition impugning this order. The application has been dismissed inter alia on the following grounds:-

i) An application filed in 2007 is barred by gross delay and laches when it seeks to set aside an ex parte preliminary decree passed way back on 21.1.1983.

ii) Jatinder Pal Singh, had already filed a suit for declaration of the preliminary decree as null and void, and in which suit, the applicant/ Amarjit Kaur was substituted after the death of Jatinder Pal Singh and consequently the plea sought to be raised in the subject application cannot be raised in the subject suit.

iii) In fact an order was already passed by the same Court on 2.11.2007 in which it was categorically admitted by the petitioner that the LRs of Jatinder Pal Singh (including the petitioner) have only a claim of one-fourth share in the property and it was not disputed that the 50% share of property was of Pritam Singh and thus the 50%

share in the suit property has to go to the branch of Pritam Singh and which is all that the preliminary decree was done.

iv) The Trial Court has noted that there is a memorandum of understanding dated 25.10.2000 entered into between respondent no.1 herein, the LR of Pritam Singh, and Jatinder Pal Singh, and which MOU is witnessed by the present petitioner (his widow) and which recognizes the fact that Pritam Singh was not aware of any Will executed in favour of Jatinder Pal Singh by late Harbhajan Singh. Relevant portion of the memorandum of understanding as reproduced by the Trial Court in the impugned order reads as under:-

“That during the lifetime of father of first party, Shri Pritam Singh filed a suit for partition in respect of the property bearing no.F-67(67/7) Radio Colony, Kingsway Camp, Delhi-09 against the legal heirs of late Sh. Harbhajan Singh which was assigned to the Ld. Civil Judge, Delhi being suit no. Hon’ble Judge Ms. Urmila Rani was pleased to pass a preliminary decree in the said suit by an order dated 21.1.1983.”

Thus in 2007 an application would not have been filed by the petitioner to challenge a preliminary decree whose existence was known to the petitioner in 2000 itself.

7. The conspectus of the above shows the plight of Pritam Singh, now represented by his legal heir the respondent no.1 herein, as to how the admitted position of Pritam Singh (and now his branch) owning 50% share in the property, for one reason or the other has been frustrated in the final decree proceedings, initially by Jatinder Pal Singh and thereafter by his legal heirs. The share of the branch of Pritam Singh being 50% is

an undisputed fact and as recorded by the Trial Court in its order dated 2.11.2007 and which reads as under:-

“SUIT NO.709/06

02.11.07.

Present: Sh. Inderveer Singh, Ld. Counsel for the plaintiff with plaintiff in person.  
Sh.S.N.Kumar with Sh. Pradeep Bhardwaj, Ld. Counsel for the LRs of the defendant no.7.  
Sh.B.K.Jha, Ld. Counsel for the defendant no.2 alongwith defendant no.2.  
Sh.P Banerjee, Ld. Counsel for the applicant Sanjeet Kr.

Heard at length for 1 hour.

It has been stated on behalf of the plaintiff that the plaintiff is having 50% share in the suit property, 25% share belongs to Satnam Kaur and 25% share belongs to LRs of defendant no.7 Jatinder Pal Singh.

Ld. Counsel for the LRs of the defendant no.7 has also stated that LRs of Jatinder Pal Singh are having 1/4<sup>th</sup> share in the suit property. Statement of Sh. Pradeep Bhardwaj, Ld. Counsel for the LRs of the defendant no.7 recorded.

Reply to the application under Section 151 CPC filed on behalf of the plaintiff.

Arguments heard. Counsel for the LRs of the defendant no.7 has filed certain judgments.

Put up for consideration/further proceedings/arguments on 17.11.07.”

I may note that the present petitioner was represented by the same counsel on 2.11.2007 before the Trial Court and who is also the counsel for the petitioner today before this Court. It fact the same counsel who appears for the petitioner had all along in all litigations represented Jatinder Pal Singh. The preliminary decree dated 21.1.1983 has achieved finality because an application filed either in 2005 or in 2007 cannot disturb finality of a preliminary decree passed way back in 1983,

more so when in appropriate proceedings/suit filed by Jatinder Pal Singh the preliminary decree was already challenged on the ground of having been allegedly obtained by fraud and no interim orders passed. In any case, the dispute is only with respect to the share of the branch of Sh.Harbhajan Singh and there is no reason why the branch of Pritam Singh should be deprived of the benefit of the admitted 50% share in the suit property and which is endeavor of the petitioner and before that of her husband Jatinder Pal Singh. The net effect of the actions of Jatinder Pal Singh in filing of an application under Order 1 Rule 10 CPC in the subject suit or filing a suit for declaration challenging the preliminary decree as having been obtained by fraud or filing a second suit on the same ground which was dismissed or filing a similar application in 2005 by Jatinder Pal Singh which has remained pending or by the present petitioner/widow of Sh. Jatinder pal Singh on her application filed on 27.10.2007, has been that all these proceedings have successfully managed in preventing for over 27 years Pritam Singh, (and now his branch represented by the respondent no.1) in getting fruits of the preliminary decree passed on 21.1.1983. All this obviously is being done because Jatinder Pal Singh, and now the petitioner is sitting pretty in the suit property. The harassment of Pritam Singh and now his legal heir surely is something which only they would understand.

9. Learned Senior counsel for the petitioner sought to argue that the first suit which was filed by Jatinder Pal Singh, late husband of the petitioner, has been adjourned sine die awaiting the decision in the

present suit where the preliminary decree was passed and therefore, the application dated 27.10.2007 to recall the preliminary decree was maintainable. Such an argument is wholly without merit because no one can take advantage of his own misconceived and malafide action in getting a suit adjourned sine die and in which suit no interim orders were obtained. Therefore it is not permissible on such basis to claim that final decree proceedings must not go on to give the branch of Pritam Singh the admitted 50% share of the property. I have already noted that the first suit filed by Jatinder pal Singh was dismissed in default four times and restored four times before the same was got adjourned sine die. As already noted above, 50% share of the Pritam Singh in the suit property cannot be disputed by the petitioner or by her late husband Sh. Jatinder Pal Singh. Simply by filing litigations, and also one application after another, the branch of Pritam Singh cannot be prevented from getting their half share in the suit property. While on this aspect, I may note that the present petitioner had also filed an application under Order 7 Rule 11 CPC in the subject suit in the Trial Court and which was dismissed by the Trial Court vide order dated 17.5.2007. The ground which was raised in the said application for rejecting the plaint in the suit in which the preliminary decree was already passed was that the suit was not properly valued for the purpose of Court fees and jurisdiction because proper market value was not fixed on the property. I am stating this fact only to complete the narration/chain of events to show as to how Jatinder Pal Singh and thereafter his branch has been in one way or the other has

been preventing the branch of Pritam Singh from enjoying their admitted 50% share in the suit property. Since the legal heirs of the Jatinder Pal Singh including the petitioner have not been successful in obtaining any interim orders in the first suit filed by Sh. Jatinder Pal Singh for stay of the operation of the preliminary decree on the ground of fraud, it is wholly inequitable for them to somehow or the other to frustrate the final decree proceedings by merely objecting to passing of the preliminary decree as per which Pritam Singh had only got his 50% share, and the share of the branch of Sh. Harbhajan Singh (and the right of which Jatinder Pal Singh is claiming) has nothing to do with the rights of the half share in the property of the branch of Pritam Singh.

10. In view of the above, the present petition is without any merit whatsoever. Both Pritam Singh and thereafter his branch have been frustrated from 1983 to get even their admitted share of 50% in the suit property on account of repeated litigations, whether they be suits one after another for setting aside the preliminary decree, or applications in the subject suit for setting aside the preliminary decree filed by Jatinder Pal Singh when he was alive in 2005, or by his widow the present petitioner by means of the subject application dated 27.10.2007 which had been dismissed by the impugned order. All these actions tantamount to almost over-reaching the Court and abusing the process of law. A Division Bench of three judges of the Supreme Court in the case of ***Salem Advocate Bar Association vs. Union of India (2005) 6 SCC 344***, in para 37, has said that it is high-time that actual costs of litigation should

be awarded. Discretion is also granted to this Court to grant actual costs by virtue of **Volume V** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part 1 Rule 15.***

11. Accordingly, while dismissing the present petition, I direct the respondent no.1 to file his affidavit with respect to costs paid to his counsels for the present petition and also the costs which have been incurred for defending the application filed by the present petitioner dated 27.10.2007 in the trial court and which has been dismissed by the impugned order. This affidavit specifying the costs incurred for payment to his counsels will be accompanied by the certificate of the counsels of having received the fees with respect to the litigations. Such costs stated in the affidavit will be costs payable by the petitioner to the respondent no.1 within a period of 4 weeks from today. Petition is dismissed with the aforesaid observations.

**May 20, 2011**  
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**VALMIKI J. MEHTA, J.**