

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

% *Date of Decision : February 21, 2014*

+ **RFA (OS) 53/2013**

Lt.COL.B.M.KHOSLA Appellant
Represented by: Appellant in person

versus

COL.S.K.KHOSLA (RETD.) & ORS. Respondents
Represented by: Mr.Rajiv K.Garg, Advocate with
Mr.Ashish Garg, Advocate for R-1
Mr.G.Kandpal, Advocate with
Mr.G.Joshi, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. The undernoted chart is indicative of the litigative attitude of the appellant. He has lost at every stage. But his appetite for litigation does not come to an end. The chart we have just referred to would be as under:-

Case No.	Particulars	Date of disposal
C.R.P.No.621/2001	B.M.K.Khosla vs.Trustees Employees Provident Fund	13.9.2001
C.R.P.No.622/201	B.M.K.Khosla vs.Trustees Employees Provident Fund	13.9.2001
C.R.P.No.623/2001	B.M.K.Khosla vs.Trustees Employees Provident Fund	13.9.2001
C.R.P.No.624/2001	B.M.K.Khosla vs.Trustees Employees Provident Fund	13.9.2001
C.R.P.No.625/2001	B.M.K.Khosla vs.Trustees	13.9.2001

	Employees Provident Fund	
FAO(OS) 296/2003	B.M.K.Khosla vs.Raj Kumar Khosla	22.10.2003
FAO(OS) 257/204	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla	29.11.2004
FAO(OS) 55/204	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	6.4.2004
FAO(OS) 152/2007	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	15.5.2007
FAO(OS) 187/2007	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	5.7.2007
FAO(OS) 218/2007	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	12.2.2009
FAO(OS) 335/2007	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	3.9.2007
FAO(OS) 3/2008	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	9.4.2008
FAO(OS) 418/2008	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	7.2.2008
FAO(OS) 65/2008	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	11.2.2008
WP(C) 11094/2009	Lt.Col.B.M.K.Khosla vs.Registrar General Delhi High Court & Ors.	1.2.2010
WP(C) 7806/2009	Lt.Col.B.M.K.Khosla vs.Lt.Governor of Delhi & Ors.	16.9.2009
FAO(OS) 26/2009	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	230.1.2009
LPA No.328/2009	Lt.Col.B.M.Khosla	

	Vs.Lt.Governor of Delhi & Ors.	22.9.2009
LPA 302/2011	Lt.Col.B.M.K.Khosla vs.Registrar General Delhi High Court & Ors.	12.7.2010
FAO(OS) 149/2011	Lt.Col.B.M.K.Khosla vs.Raj Kumar Khosla & Ors.	4.4.2011
CS(OS) 1890/2011	Lt.Col.B.M.K.Khosla vs.DDA	20.4.2012
RFA(OS) 56/2012	Lt.Col.B.M.K.Khosla vs.DDA	22.5.2012

2. Instant appeal challenges the order dated August 28, 2012. It reads as under:-

“1. In a suit for partition, a preliminary decree declares the shares of the parties. Thereafter a final decree is passed by which a suit is disposed of. A final decree for partition is an instrument of partition under Section 2(15) of the Indian Stamp Act, 1899. Final decree therefore will have to be stamped in accordance with law, i.e. Article 45 of Schedule 1 of the Indian Stamp Act, 1899. Issues with regard to sale of the properties will be issues in execution proceedings.

2. In the present case, the parties agree and as recorded in the order dated 12.10.1999, that the properties in question have to be sold. Once it is agreed that the properties cannot be partitioned by metes and bounds and have to be sold, a final decree will have to be passed at this stage and necessary stamp duty in terms of Article 45 of Schedule I of the India Stamp Act, 1899, has to be paid before further proceedings are taken for sale of the property.

3. *In the present case, I understand two of the properties, i.e. one at Vasant Vihar, Delhi and another at Jalandhar, Punjab have been sold after the preliminary decree without the final decree being drawn up.*

4. *It is therefore directed that firstly a final decree be drawn out and necessary stamp duty be paid before further proceedings are taken with respect to sale of the balance properties, and which sale will take place in execution proceedings. So far as the properties which have already been sold since the price at which the properties have been sold are on record, such sale value will be taken as a value with respect to preparing a final decree for partition and payment of stamp duty with respect to the properties which are sold. With respect to the properties not sold, the procedure as prescribed by law be adopted for valuing of such properties and for paying of stamp duty on the same. The total stamp duty which would be payable for drawing up of the final decree for partition would be the value with respect to all the properties which are subject matter of the present suit.*

5. *Since in the present case various orders have been passed post passing of the final decree, all such orders will stand preserved with respect to action to be taken for sale of other properties which were subject matter of this partition suit.*

6. *This suit is disposed of by passing a final decree observing that the preliminary decree is confirmed and all the properties will have to be sold. Necessary steps for sale of the balance properties will be taken up in execution proceedings, and any orders passed in the suit, after passing of the preliminary decree, to the extent the same are required for furtherance of the execution proceedings the same will enure for the benefit of the parties limited to the requirement of execution of the final decree in the execution proceedings.”*

3. Challenging the order it is pleaded that the suit properties do not belong to the late father of the parties Sh.Nakul Dev Khosla. The properties were that of a Hindu Undivided Family. It is pleaded that the wills executed by the parents of the parties were invalid. It is prayed that the sale of property bearing municipal No.33, Poorvi Marg, Vasant Vihar, New Delhi and House No.337, New Jawahar Nagar, Jalandhar City made on October 21, 2005 and November 13, 2007 be set aside.

4. The litigious attitude of the appellant would be evidenced from the fact that late Sh.Nakul Dev Khosla and his wife Smt.Satya Pal Devi Khosla were blessed with four sons and a daughter. The names of the four sons are : (i) Raj Kumar Khosla (plaintiff); (ii) Col.S.K.Khosla (Retd.) (defendant No.1); (iii)Lt.Col.Brij Mohan Kumar Khosla (Retd.) (defendant No.2); and (iv) Kul Bhushan Kumar Khosla (defendant No.3). The name of the daughter is Kamal Mohini Passi.

5. Raj Kumar Khosla instituted CS(OS) No.2520/1996 praying for partition of four properties mentioned in paragraph 7 of the plaint being: 33 Poorvi Marg, Vasant Vihar, New Delhi; 337, New Jawahar Nagar, Jalandhar City; half portion of house situated at Khosla Mohalla, village Rahon, Tehsil Nawa Shehar, District Jalandhar; and agricultural land measuring 24 Kanal and 6 marlas in village village Rahon, Tehsil Nawa Shehar, District Jalandhar. It was pleaded that Nakul Dev Khosla and his wife Smt.Satya Pal Devi Khosla were blessed with four sons and a daughter. That on a suit filed by Kulbhushan Kumar Khosla, registered as Suit No.128/1984 a declaration had been passed by the learned Sub-Judge that House No.33, Poorvi Marg, Vasant Vihar, New Delhi and 337, New Jawahar Nagar, Jalandhar City were equally owned by the four sons because during the pendency of the suit the father Nakul Dev Khosla had expired on August 05,

1984 and had executed a will on September 28, 1982 bequeathing his share equally amongst his wife and the sons. The mother Smt.Satya Pal Devi Khosla expired on February 28, 1987 and had executed a will dated September 28, 1982 bequeathing her share to her sons.

6. In the written statement filed by the three defendants, which includes the appellant in the appeal, it was never pleaded by anybody that the suit properties are HUF properties. Impleaded as defendant No.2, in the first preliminary objection taken by the appellant as per the statement filed by him, he pleaded as under:-

‘The suit has been filed without any requisite cause of action necessitating filing of the suit. The parties to the suit have 1/4th share each in the properties mentioned in the suit and the parties are willing to take their respective shares’

7. Keeping in view the pleadings of the parties, vide order dated May 20, 1998 a preliminary decree was passed declaring the plaintiff and the three defendants to be having 1/4th share each in the properties. The order records that the parties would like to sit across the table and mutually agree as to in what manner they would like to effect severance of their joint share so that each could be the individual owner with reference to the share of each being 1/4th in the joint properties.

8. Hereinafter began the story of a protracted litigation by the appellant to stall the implementation of the preliminary decree; declaring share of the four brothers as 1/4th each, based on admission in the pleadings.

9. Attempts made to sell the properties were frustrated by application after applications filed by the appellant who started claiming that being properties belonging to the Hindu Undivided Family, neither the father nor the mother could executed any will concerning the properties; overlooking

the fact that the parents could certainly bequeath their shares in the joint properties to anybody they desire. The objections overlooked the fact even if the properties were to be treated as those of the HUF, upon partition apart from the four sons and their father; the mother would get an equal share. In other words, the share of the four brothers and the two parents would be $1/6^{\text{th}}$ each. As per the wills executed by the parents their share was bequeathed to the four sons. Thus, the share of each son would be $1/4^{\text{th}}$.

10. The appellant started questioning just about everything. Orders passed against him were challenged in appeals which were dismissed. A Court Commissioner had to be appointed to value the properties and try to sell them because the parties could not agree to a mode of settlement. The order dated July 12, 2006 passed in the suit succinctly notes the fact which had transpired till when the order was passed and we reproduce the same. It reads as under:-

“ IA 5497/2006

The Local Commissioner has filed his report dated 26th April, 2006 and Defendant No.2 has filed some objections to this report. By this order, I propose to deal with his objections.

It appears that the father of the parties, that is, Nakul Dev Khosla left behind several properties including a house in Vasant Vihar, New Delhi, a house bearing No.337, Jawahar Nagar, Jalandhar, some agricultural land and an ancestral house in Village Rahon, Punjab.

This suit for partition was filed by the Plaintiff, one of the sons of Nakul Dev Khosla. The three Defendants are the other three sons of Nakul Dev Khosla.

On 20th May, 1998, it was stated by learned counsel for the parties that the matter could be settled. It was submitted by learned counsel for the parties that the

share of the parties are admitted and all the parties are entitled to 1/4th share in the properties in question. In view of the statement made by learned counsel for the parties, a preliminary decree of partition was passed. Learned counsel for the parties stated that they would like to have a mutual settlement with regard to their respective shares amounting to 1/4th of the properties in question. Liberty was given to the parties to mutually decide their shares in the properties in question, failing which a Court Commissioner would be appointed to suggest ways and means for partition.

It is significant to note that no dispute was raised by any of the parties about any of the properties to the effect that they belong to the HUF of Nakul Dev Khosla.

Thereafter, on 12th October, 1999, the parties were present in person and there was a broad agreement between them and their learned counsel that the properties in question should be sold and proceeds distributed. Again, no dispute was raised by anybody about any of the properties to the effect that they belong to the HUF.

On 25th April, 2001, a detailed order was passed incorporating all the above facts. It was noted that since no settlement could be arrived at, a Court Commissioner was appointed to sell the properties. Again, no dispute was raised to any of the properties to the effect that they belong belonging to the HUF.

On 29th May, 2003, a final decree was passed in the suit. It was noted that as per the order dated 20th May, 1998, the shares of the parties in the suit properties are admitted and it was on that basis that a preliminary decree of partition was passed. Then on 29th May, 2003, the parties again stated that they would like to have a mutual settlement with regard to their respective 1/4th share in the properties in question. As regards the property in Vasant Vihar, the parties desired to sell that property and distribute 1/4th share each from the sale proceeds.

Defendant No.2, who was present in Court on that date, that is, on 29th May, 2003 stated that a decree was passed in respect of the Vasant Vihar property on 20th August, 1984 by a Court in Jalandhar declaring it as the property of the HUF. In view of this, the learned Judge perused the judgment and decree and found that the Jalandhar suit was filed by one of the brothers, namely, Defendant No.3 herein as the plaintiff against his father, mother and other three brothers. The father, that is, Nakul Dev Khosla died during the pendency of the suit and his share devolved upon the mother who also died during the pendency of the suit and her share devolved upon her four sons (who are all parties in the present suit before me) in equal shares in terms of a Will which was executed by the father. Therefore, the four brothers held 1/4th share each in the Vasant Vihar property.

Since a preliminary decree of partition had been passed and the parties were in agreement in respect of their respective share in the suit property, a final decree was passed in respect of the Vasant Vihar property which was to be sold and the sale proceeds distributed among the four parties in equal share. Since the suit survived in respect of the other properties, the matter was adjourned for 14th July, 2003.

The sum and substance of all this is that this Court all along proceeded on the basis that the parties to this suit had 1/4th share in the suit properties.

Pursuant to the order dated 29th May, 2003, the Vasant Vihar property was in fact sold and the sale proceeds have been distributed but it is stated that Defendant No.2 has not taken his share which is lying deposited in this Court. I am told by learned counsel for the parties that the Vasant Vihar property has been sold and the sale has been registered in the name of the purchaser. Against the final decree passed on 29th May, 2003, an appeal was filed before a Division Bench of this Court which was dismissed. The decree of partition has, therefore, attained finality.

Defendant No.2 also challenged the sale of the Vasant Vihar property but the challenge was rejected by a Division Bench of this Court and also by the Supreme Court.

It appears that while the sale process was being finalized in respect of the Vasant Vihar property, Defendant No.2 raised some objections which were dealt with by a learned Single Judge on 21st September, 2004. The objection was that the Vasant Vihar property was HUF property and the emotional attachment of the family members should be preserved and the sale could not be ordered. It was noted in the order dated 21st September, 2004 that it was too late in the day to raise this contention in view of the fact that the sale proclamation had already been ordered with the consent of the parties and that had been confirmed on several dates. It was contended on behalf of Defendant No.2 that the consent for sale was wrongly recorded but this contention was rejected in the order dated 21st September, 2004. The order dated 21st September, 2004 was taken up in appeal by Defendant No.2 and in FAO (OS) No.257/2004, the Division Bench termed the appeal as a sheer abuse of the process of law. It was noted that learned counsel for the appellant (Defendant No.2 herein) was repeatedly asked why the question of the Vasant Vihar property being HUF property was not agitated but to no avail. Be that as it may, the Division Bench dismissed the appeal with costs of Rs.5,000/-.

In spite of this, Defendant No.2 continued to raise objections that the Vasant Vihar property was HUF property and this argument of Defendant No.2 was considered and again rejected by a learned Single Judge of this Court on 8th April, 2005. The order dated 8th April, 2005 appears to have been taken up to the Supreme Court and the Supreme Court did not entertain the special leave petition filed by Defendant No.2.

The objection that is now raised by Defendant No.2 is to the same effect but with reference to property bearing

No.337, Jawahar Nagar, Jalandhar. No objections have been raised with regard to the agricultural land or the ancestral house in Village Rahon. The objection that has been raised with regard to the report of the Local Commissioner in respect of House No.337, Jawahar Nagar, Jalandhar is to the effect that this is HUF property and, therefore, cannot be sold. The arguments advanced by learned counsel for Defendant No.2 are the very same arguments that were advanced from time to time with regard to the Vasant Vihar property and which have consistently been rejected. I do not think it is appropriate for me to take a different view, particularly when these arguments have not found favour with several learned Judges and the Division Bench and also the Supreme Court.

Accordingly, the objection in this regard is rejected.

The second objection raised by Defendant No.2 with regard to the sale of House No.337, Jawahar Nagar, Jalandhar is that it should be got properly valued by a Government approved valuer and only thereafter should it be sold. Learned counsel for the parties do not have any objection to this but they say that Defendant No.2 has not been forthcoming with regard to payments that are required to be made to the Court Commissioner towards his fees and therefore Defendant No.2 may also not make the payment for valuation of the Jalandhar property. Learned counsel for Defendant No.2 says that his client has no objection in paying his 1/4th share for having House No.337, Jawahar Nagar, Jalandhar valued by a Government approved valuer.

Under the circumstances, the Court Commissioner will visit Jalandhar and have the property bearing No.337, Jawahar Nagar, Jalandhar valued by a Government approved valuer. The Court Commissioner will visit Jalandhar only upon receipt of the fees of the Government approved valuer. This is tentatively fixed at Rs.40,000/-. All the parties should

deposit a sum of Rs.10,000/- each in the Registry of this Court within a period of two weeks from today. Of course, if the amount is less, a proportionate refund will be given.

List for compliance regarding payment on 30th May, 2006.

IA 2366/2004

By this application, Defendant No.2 seeks an order for determination of the nature of the properties sought to be sold.

In view of the above discussion, nothing further survives in this application and the same is dismissed as such.

IA 2367/2004

In this application, it is prayed by Defendant No.2 that it is necessary in the interest of justice that proper orders be passed considering the facts and circumstances of the case so that there is no illegality or factually wrong submission made to affect sale of the properties.

The prayer is extremely vague and so the application is dismissed.

IA 2139/2004

Dismissed as withdrawn.”

11. The order speaks it all.
12. The appellant is litigating frivolously by urging that the properties belonged to the Hindu Undivided Family.
13. It was nobody's case that the property belonged to the Hindu Undivided Family.
14. We find that the appellant has challenged the order dated October 21, 2005.

15. No order has been passed on October 21, 2005. It appears that the appellant is challenging the order dated November 21, 2005 passed in the suit which reads as under:-

“The Local Commissioner has submitted his report and is present in Court. It is stated that property at Jullundur is a single unit and it is not possible to divide the said property by metes and bounds between the parties. In fact the parties are also agreeable to the suggestion and they prayed that there could be an inter-se bidding between the parties.

Defendant No.3, who is in possession of the property submits that he is not interested in giving any bid and the same may be sold by public auction. Defendant No.2 is not present despite the fact that the case has been called out twice since morning. He is ordered to be proceeded against ex-parte in these proceedings. Plaintiff and defendant No.1 through their counsel have given inter-se bid. The plaintiff is willing to buy the property at a sum of ₹85 lakhs. He does not wish to give any other amount more than this amount. Primarily the plaintiff would be entitled to bid this property at a sum of ₹84 lakhs. However, in the interest of justice, another opportunity is granted. If defendant No.3 or defendant No.2 is willing to get a buyer at a higher amount in excess of at least ₹2 lakhs more, they shall inform the Court, failing which the bid given by the plaintiff in Court today through his counsel shall be accepted.

The learned Local Commissioner has not been able to visit the other ancestral properties which are stated to be situated in village Rahon, District Jullundur, Punjab. It is obviously difficult to identify the land unless and until the parties and the concerned Patwari are present on the site. Consequently, the parties, who are present in Court are directed to be present on 21st December, 2005 at the place mentioned above. The revenue authorities i.e. Patwari of the concerned Halka shall be present and would assist the Commissioner in all respects.

List the case on 24th January, 2006.”

16. The order does not decide anything. The next order passed on November 29, 2005 notes that the parties desire the property at Jalandhar to be sold by public auction. The order dated May 12, 2006 records the manner in which the appellant had been obstructing giving final effect to the preliminary decree.

17. Further orders would reveal that repeated attempts made to draw up the sale proclamation and sell the property at Jalandhar were frustrated. The appellant has challenged an order dated November 13, 2007. We find no order passed on said date. In the suit there exist an order dated November 07, 2007 which reads as under:-

“IA Nos.10296/07 & 11853/07 in CS(OS) No.2520/1996

The Court Commissioner has filed an application seeking permission to sign the sale deed/conveyance deed for and on behalf of defendant No.2 and to get the same registered with the Sub Registrar, Jalandhar, Punjab, and to return the draft bearing No.015324 dated 6th March, 2007 for a sum of ₹1.00 lakh deposited by the highest bidder. Another application is filed by Mr.Mukul Sabharwal, the purchaser of the property at Jalandhar, for a total sum of ₹1,26,00,251/- seeking appropriate direction to the Court Commissioner to execute the conveyance in respect of property No.337, New Jawahar Nagar, Jalandhar.

The draft of the proposed conveyance to be executed in favour of Mr.Mukul Sabharwal was given to the plaintiff and defendant Nos.1, 2 and 3. There has been no objection to the proposed conveyance by the plaintiff and defendant Nos.1 and 3.

The objections were filed by defendant No.2 to the proposed conveyance deed to be executed in favour of

Mr.Mukul Sabharwal, the proposed purchaser of the property at Jalandhar. The objections of defendant No.2 being IA No.12161/2007 were dismissed by order dated 24th October, 2007 with a cost of ₹10,000/- payable by defendant No.2.

Learned counsel for the defendant No.2 contends that he wants to file an appeal against the order dated 24th October 2007, dismissing his objection and he had applied for the certified copy of the same on 24th October, 2007 where the next date had been given as 6th November, 2007. The learned counsel for the defendant No.2 states that no endorsement has been made on his application for certified copy, however, the certified copy of the order dated 24th October, 2007 which defendant No.2 wants to impugn is not ready.

In case the defendant No.2 wanted to file an appeal against the order dated 24th October, 2007, it could be filed on an ordinary copy which could be availed by defendant No.2 by inspection of the file. It seems that copy of the order dated 24th October, 2007 is also available on the internet. Learned counsel for the defendant No.2 states that his client is too poor to get a copy from the internet. The counsel for defendant No.2 also states that he will not inspect the judicial file as, according to him, an order is missing from the judicial file and the blame may come on him in case file is inspected by him.

On the basis of the pleas raised by defendant No.2, the adjudication and decision of above applications cannot be postponed.

The objections against the proposed conveyance deed to be executed by the Court Commissioner in favour of purchaser, Mr.Mukul Sabharwal, cannot be postponed as the entire sale consideration has either been paid on the Court Commissioner or is lying deposited with the Registrar of this Court. No impediment has been pointed out against the execution of the conveyance deed in favour

of purchaser who has either paid or deposited the entire sale consideration.

Consequently, the applications are allowed. The Court Commissioner is directed to execute the conveyance in favour of the purchaser, Mr. Mukul Sabharwal, on the date and time convenient to the Court Commissioner. The Court Commissioner is also authorized to execute the conveyance on behalf of defendant No.2.

Learned counsel for the plaintiff states that he has instructions from his client to authorize the Court Commissioner to execute the conveyance in favour of Mr. Mukul Sabharwal, the purchaser, on his behalf also as he is unable to go to Jalandhar for registration of the conveyance to be executed in favour of Mr. Mukul Sabharwal on account of his hospitalization.

In the facts and circumstances, the Court Commissioner is also permitted to sign and get the conveyance deed registered on behalf of plaintiff in respect of property at Jalandhar.

Since the conveyance is to be executed in favour of Mr. Mukul Sabharwal who has either paid or deposited the total consideration of ₹1,26,00,251/-, the draft of ₹1.00 lakh deposited by the purchaser, Mr. Mukul Sabharwal, as an earnest money be also returned to him forthwith.

With these directions the applications are disposed of.”

18. It is apparent that the property at Jalandhar was sold in the year 2007. Thus it is too late in the day for the appellant to challenge the sale of the property at Jalandhar. As regards the property at Poorvi Marg, Vasant Vihar, New Delhi we find that the Court Commissioner appointed by the Court submitted a report that the highest bid he has received for sale of the property was in sum of ₹9.15 crores. Vide order dated November 16, 2004

the bid was confirmed. The appellant questioned the sale pleading that the decree was invalid since the properties belonged to the Hindu Undivided Family, a plea which was negated vide order dated April 08, 2005. The Court approved the draft of the agreement to sell prepared by the learned Local Commissioner. Order dated May 30, 2005 records that all brothers, which include the appellant, have signed the agreement to sell, the undertaking, indemnity bonds and have submitted affidavits.

19. At this stage we note that the buyer was happy to take possession of the property under the agreement to sell but had desired sale deed to be executed because the property at Poorvi Marg, Vasant Vihar, New Delhi was under a perpetual lease-hold tenure and policy of DDA permitted the lead-hold tenure to be converted into free-hold tenure. He had desired execution of the sale deed when the property was converted into free-hold.

20. Thereafter, the property was converted into free hold and sold.

21. Thus, it is too late in the day for the appellant to question the sale of the property at Poorvi Marg, Vasant Vihar, New Delhi.

22. The appellant contends that since the sister of the parties were not impleaded as a defendant and in the suit the decree would be a nullity. The appellant points out that the application filed by the sister to be impleaded as a defendant in the suit was rejected by the learned Single Judge against which she filed an appeal which was dismissed. Appellant points out that notice has been issued by the Supreme Court in the petition seeking Special Leave to Appeal filed by the sister.

23. What happens in said proceedings is irrelevant insofar as the appellant is concerned for the simple reason it is settled law that a decree in a suit does not, and cannot affect the rights of third parties. If the sister has a claim to the properties she has an independent right to sue and claim a share therein.

24. Noting as above and finding the appeal to be wholly frivolous we dismiss the same imposing cost of ₹1,00,000/- (Rupees One Lakh only) upon the appellant; to be shared equally by the three respondents.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

FEBRUARY 21, 2014
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