

Court No. - 19

Case :- FIRST APPEAL No. - 18 of 2022

Appellant :- Smt. Manju Jain And 3 Others

Respondent :- Smt. Gurmala Jain And 3 Others

Counsel for Appellant :- Mohammad Aslam Khan

Counsel for Respondent :- Krishna Kumar Singh, Anurag Narain Srivastava, Anurag N, Shailendra Kumar Misra

along with

Case :- FIRST APPEAL DEFECTIVE No. - 50 of 2023

Appellant :- Smt. Manju Jain And 3 Others

Respondent :- Smt. Gurmala Jain And 2 Others

Counsel for Appellant :- Mohammad Aslam Khan

Counsel for Respondent :- Anurag Narain, Prabhakar Vardhan Chaudhary

Hon'ble Jaspreet Singh, J.

1. The instant appeal bearing No. 18 of 2022 has been preferred by the defendants, who are the appellants before this Court, challenging the preliminary decree passed in suit for partition bearing No.522 of 2015 (Smt. Sunahari Devi Jain (the deceased, who has legal heirs) versus Namechandra Jain (deceased through legal heirs), whereby the suit for partition was decreed on 18.01.2022. Being aggrieved, the said appeal was preferred though it was admitted but no interim order was passed.

2. In the meantime, the final decree proceedings were initiated and by means of order dated 13.03.2023, the final decree proceedings were crystalized and the specific portions which was to be allotted to the parties i.e. the partition scheme was also prepared. It is at this stage, the defendants once again preferred the First Appeal bearing No. 50(D) of 2023 along

with an application seeking condonation of delay .

3. In the aforesaid, First Appeal No.50(D) of 2023, notices were issued on the application for condonation of delay in pursuance thereof Shri Anurag Narayan and Shri P.V. Chaudhary, learned counsels have filed their Vakalatnama on behalf of the respondents.

4. The situation before the Executing Court was that the appellants were directed to hand over the possession. Certain orders were passed by the Executing Court permitting the Amin to take aid of police for the proper implementation of the partition scheme so that each of the parties could be placed and put in physical possession of the portions allotted.

5. In this aforesaid backdrop, the appellants have moved an application bearing No.7 of 2023 where they indicated that they were willing to withdraw the appeal, however, they prayed that they may be granted six months' time to raise constructions over their share and portion allotted to them in terms of the partition scheme. Since there was certain lacuna in the said application, further time was granted and in pursuance thereof today an application for withdrawal has been moved in both the First Appeals bearing No.50(D) of 2023 and 18 of 2022.

6. Shri P.V. Chaudhary, learned counsel appearing for the respondents along with Shri Anurag Narayan, submit that they have no objections, in case, if six months' time, as prayed is granted, provided the appeals are withdrawn and the appellants undertake to vacate the portion under their occupation at the end of six months.

7. Considering the facts and circumstances as well as noticing the affidavits filed by the appellants to say that they do not wish

to press the appeals. Accordingly, both the appeals are dismissed as withdrawn. This Court further provides that the appellants shall within a period of six months from today hand over the premises in their occupation as of now and shift to their own allotted share after finishing the construction they wish to raise over the allotted portion as per the partition scheme. It is made clear that non-completion of their construction will not be a ground to delay or not to comply with this order and any misuse or non-compliance and not handing over the possession to the respondents within six months as mentioned above will be itself treated as wilful disobedience and contempt of the Court.

8. With the aforesaid, the both the appeals are **dismissed as withdrawn.**

9. Consigned to record.

10. Office is directed to return the lower court record forthwith.

Order Date :- 8.12.2023

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