

\$~7

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

+ RFA 99/2006

DR. BALDEV RAJ ANAND & ANR. Appellants

Through: Mr. Pravin Sharma, Advocate

versus

DEWAN CHAND DECD. THR.LR'S &ORS Respondents

Through: Mr. Kuldeep Gola, Advocate for LR
of R-1

Mr. Jagmohan Sabharwal, Sr.
Advocate with Ms. Seema Singh,
Advocate for R-1 B1 (Garima Anand)
Mr. Sameer Dewan, Advocate for R-2
LRs of R-3

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **31.05.2016**

CM APPL. 20442/2016

1. This is an application under Section 152 and 153 CPC filed by the LRs of respondent No.1B 1.
2. I have heard Mr. Jagmohan Sabharwal, the learned senior counsel for LRs of respondent No.1B 1 as well as other counsel.
3. The learned senior counsel has contended that in paragraph nos.2 and 9 of the judgment dated 26.4.2016, inadvertently, the date of the preliminary decree passed by the trial court is mentioned as 17.01.2016 while as actually, the decree was passed on 07.01.2016 and accordingly, prays for modification of the aforesaid paragraphs to this extent.
4. Further, it has stated by the learned senior counsel for LRs of respondent No.1B 1 that in paragraph '17', the court has directed to

divide the property in terms of the final decree and therefore, sale proceeds be proportioned in favour of co-sharer as has been held by the learned trial court. It has been contended that there is some kind of uncertainty in paragraph 17 and inasmuch as it gives an impression that the beneficiaries are to get $\frac{1}{7}$ th share in the entire property while the fact remains that the property was owned by the two persons Tej Ram and Dewan Chand being the father and son. So far as, the applicant is concerned, he is the son of Tej Ram and therefore, the property to be proportioned to the LRs of Dewan Chand would get half ($\frac{1}{2}$ th) plus $\frac{1}{7}$ th of the other half ($\frac{1}{2}$ th) and other sons of Sh. Tej Ram will get $\frac{1}{7}$ th share of half ($\frac{1}{2}$ th) portion.

5. In the light of aforesaid facts, it is stated that this may be clarified that LRs of Dewan Chand would get half ($\frac{1}{2}$ th) plus $\frac{1}{7}$ th of the other half of the sale proceeds in terms of the preliminary decree. Therefore, the entire property to be sold and entire half ($\frac{1}{2}$) of the sale proceeds plus $\frac{1}{7}$ th of the other half ($\frac{1}{2}$ th) is to go to LRs of Dewan Chand and $\frac{1}{7}$ th of half ($\frac{1}{2}$ th) of the share has to go to other sons of Sh. Tej Ram.

6. In view of the statement made by the learned senior counsel to which there is no opposition or dispute raised by the parties, paragraph 16, 17 and 18 if read together will entirely show that the entire property is to be auctioned and other sons of Sh. Tej Ram would get $\frac{1}{7}$ th of the half ($\frac{1}{2}$) of the sale proceed in terms of the decree passed by the learned trial court.

7. Accordingly, the application stands disposed of.

V.K. SHALI, J.

MAY 31, 2016/b