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

+ **RFA(OS) 32/2017 and C.M. Nos.19968/2017 & 19969/2017**

Date of decision: 30<sup>th</sup> May, 2017

SWEETY GUPTA

..... Appellant

Through Mr. Mandeep Singh Vinaik and Ms.  
Aswathy Menon, Advocates.

versus

NEETY GUPTA AND ORS

..... Respondent

Through

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MS. JUSTICE PRATHIBA M. SINGH**

**SANJIV KHANNA, J. (ORAL)**

There is delay in filing and re-filing of the appeal and applications seeking condonation of delay have been filed. Before issuing notice on the said applications, we have deemed it appropriate to first examine the appeal on merits.

2. The present Regular First Appeal impugns order dated 19<sup>th</sup> September, 2016 by the Learned Single Judge, passing the final decree in the suit for partition.

3. The appellant and the respondents are sisters being children of late Shri B.K. Gupta and late Smt. Tara Gupta.

4. Neety Gupta, the first respondent in this appeal, had filed CS

(OS) No.2209/2008, for partition of property bearing No.B-7, 80/2, Safdarjung Enclave, New Delhi, which belonged to and was acquired by late B.K. Gupta as a member of the cooperative society. The plaint also refers to the two other properties namely, No.B-9, Rohit Kunj, Pitampura and immovable property/agricultural land at Karnal, Haryana. The present appellant, namely, Sweety Gupta was defendant No.4 in the aforesaid suit. She was proceeded ex-parte vide order dated 7<sup>th</sup> July, 2009. Evidence was recorded and thereafter a preliminary decree of partition dated 27<sup>th</sup> September, 2011 was passed holding that the five sisters were entitled to 1/5<sup>th</sup> share each in the suit properties bearing No.B-7, 80/2, Safdarjung Enclave, New Delhi and property bearing No.B-9, Rohit Kunj, Pitampura. The preliminary decree for partition also recorded that in the absence of particulars of the property at Karnal, the plaintiff had consented to give up the claim for the same.

5. The present appellant had thereafter filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside of the ex-parte decree. In the said application, evidence was recorded. The application was dismissed vide order dated 28<sup>th</sup>

January, 2016. The review application filed by the appellant was also dismissed.

6. The appellant had thereafter filed FAO (OS) No.108/2016, which was dismissed vide order dated 25<sup>th</sup> October, 2016. SLP preferred by the appellant against the said order, it is stated, has been rejected.

7. In view of the aforesaid position, the preliminary decree of partition holding that the present appellant along with respondent Nos.1 to 4 are entitled to 1/5<sup>th</sup> share in the suit properties bearing No.B-7, 80/2, Safdarjung Enclave, New Delhi and No.B-9, Rohit Kunj, Pitampura stands affirmed and confirmed. We cannot in the present appeal go behind and examine the preliminary decree and whether or not 1/5<sup>th</sup> share as affirmed and declared is justified or correct.

8. Counsel for the appellant submits that the appellant relies upon a registered Will of late Smt. Tara Gupta, wife of late B.K.Gupta. It is noticed that the question of Will was specifically adverted to and contested in the plaint. We do not think that the appellant can be permitted to urge and raise the issue of purported Will in her favour

once the preliminary decree of partition apportioning the share of the appellant and respondent Nos.1 to 4 in property bearing No.B-7. 80/2, Safdarjung Enclave, New Delhi has been passed. This would amount to re-opening of the issue already decided and challenging the preliminary decree, which contest has already been denied to the appellant vide order dated 28<sup>th</sup> January, 2016 dismissing the application under Order IX Rule 13 for setting aside of the ex-parte decree. The said dismissal stands affirmed by the Division Bench and the SLP against the said decision has also been rejected. Therefore, the reliance placed by the appellant on the alleged Will has to be rejected.

9. No other ground is urged or argued.

10. In view of the aforesaid, we do not find any reason to issue notice on the applications seeking condonation of delay. The said applications and the appeal are dismissed.

**SANJIV KHANNA, J**

**PRATHIBA M. SINGH, J**

**MAY 30, 2017**  
**NA**