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

+ EFA(OS) 11/2017 & CM Nos.9214-9215/2017

BALJINDER SINGH Appellant

Represented by: Mr.Raman Gandhi, Advocate

versus

SADHU SINGH & ORS Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **08.03.2017**

CM No.9215/2017

Allowed subject to just exceptions.

EFA (OS) No.11/2017

1. Late Ms.Sant Kaur and Late Sh.Balwant Singh were blessed with four sons : (i) Gurbachan Singh, (ii) Sadhu Singh, (iii) Ajit Singh and (iv) Savinder Singh. Whereas property bearing Municipal No.2113/164, Tri Nagar was owned by Sant Kaur, property bearing No.256/9, Gali No.7, Padam Singh Nagar, Krishan Garh, probably was owned by Balwant Singh. But this dark area is irrelevant as would emerge from the further facts which we note.

2. Both parents have died. Gurbachan Singh filed a suit for partition claiming 1/4th share in the two properties. During evidence reference was made to a will dated January 17, 1996 purportedly executed by Sant Kaur.

3. On the basis of the evidence led, by a judgment and decree dated July 16, 2013 a preliminary decree was passed that the share of the four brothers in the two properties was 1/4th. By two subsequent orders dated July 16, 2015 and November 18, 2015 final decree in terms of the preliminary decree was passed.

4. Gurbachan Singh having died, his wife and the children sought execution of the decree for partition. In the execution proceedings Baljinder Singh, son of Sadhu Singh filed EA (OS) No.587/2016. He objected to the decree being executed and relied upon a will purportedly executed by his grandmother on February 22, 1996, claiming that the property at Tri Nagar had been bequeathed to him.

5. Vide impugned order, the learned Single Judge has dismissed the objections summarily holding that in view of Clause (b) of the Proviso to Rule 58(1) of Order 21, the objections were designed to unnecessarily delay the execution. The fact on which said opinion has been arrived at by the learned Single Judge is that admittedly Sant Kaur died in the year 1996 and till when the objections were filed the objector had not initiated any proceedings for the will to be probated.

6. We have repeatedly asked learned counsel for the appellant as to why the appellant did not enforce his right, if at all the will existed, for the reason as per him his grandmother had bequeathed the entire property at Tri Nagar to him. Concededly the four sons of Late Sant Kaur were in joint possession of the property at Tri Nagar. If the property had been bequeathed in its entirety to the appellant, logical conduct of the appellant would be to call upon his uncles to vacate the property. We highlight that the learned Single Judge has in turn highlighted that the objections were

filed upon the close on heels of the execution proceedings being taken out after a series of orders were passed, after some of which were with the consent of the appellant's father.

7. We dismiss the appeal in limine.

8. No costs.

CM No.9214/2017

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

MARCH 08, 2017

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