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

+ **FAO(OS) 260/2016 & CM Nos.33311/2016, 3937/2017**

SARDAR GOVINDER SINGH Appellant
Through **Mr.Manjit Singh Ahluwalia, Adv.**

versus

SARDAR TEJINDER SINGH Respondent
Through **Mr.I.S. Alag, Sr. Adv. with Mr. J.S. Lamba, Mr.R.S. Bishit and Mr.Rajesh Kumar, Advs.**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **27.04.2017**

This intra-court appeal under Section 10 of the Delhi High Court Act, 1966 finds two brothers Sardar Govinder Singh and Sardar Tejinder Singh on the opposite sides.

2. The challenge is to the order dated 24.8.2016 passed in IA no. 13252/2015, whereby, an application under Order VII, Rule 11 of Code of Civil Procedure, 1908 (Code, for short) has been dismissed.

The operative portion of the impugned order reads as under:-

“10. It is pointed out by Mr. Vachher that CS (OS) No. 973 of 1994 is at the stage of final arguments and in the present suit, issues have not been framed as yet. It is apprehended, therefore,

that the disposal of CS (OS) 973 of 1994 may get interminably delayed if both suits are to be heard together.

11. As far as the present suit is concerned, issues are being framed today and the recording of evidence can be expedited particularly since the evidence would be confined to the events subsequent to the institution of CS(OS) No.973 of 1994. The evidence recorded in CS (OS) No. 973 of 1994 can be read in the present suit as well.

12. The application is accordingly dismissed.”

3. The dispute pertains to property no. 3, Sardar Patel Marg, New Delhi and the share of the parties in the said property. The respondent has filed CS(OS) no. 973/1994 inter alia praying for declaration that the compromise filed vide IA no. 10195/1993 in Suit no. 3403/1991, between the appellant and mother Ravinder Swaroop Singh, is null and void, and not binding on him.

4. It is an accepted position that evidence stands recorded and CS(OS) No. 973/1994 is now fixed for final arguments.

5. The appellant submits that all issues and contentions relating to the compromise decree dated 25.11.93 can be raised and decided in CS(OS) No. 973/1994. He has drawn our attention to the order dated 4.11.2011 passed in FAO (OS) No. 539/2011 titled ***Sardarni***

Ravinder (since deceased) through LRs vs. Sardar Govinder Singh

and order dated 21.5.2014 passed in FAO (OS) No.416/2011 titled

Sardar Govinder Singh vs. Satender Singh & Ors. In specific our

attention was drawn to the following paragraphs in the order dated

21.5.2014 in FAO (OS) No. 416/2016:-

“7. The instant application has been necessitated on account of the fact that cross examination of defendant No.2 has landed in a problem occasioned by the fact that Schedule I and II which form part of a decree dated November 25, 1993 in CS (OS) No.3403/1991 was found to be missing in the judicial record when the same was summoned to confront the witness during cross examination.

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9. We need not go deep into the issue for the reason learned counsel for the parties have consented to a via-media whereby the cross examination of defendant No.2 can be completed on one day.

10. Schedule I and Schedule II annexed to the decree dated November 25, 1993, if attempted to be located in the precincts of the Delhi High Court may take years together and since certified copies are available with the parties, the witness would be cross examined with reference to the certified copies. Here we may point out that three certified copies, one issued by the office of the Sub-Registrar, Asaf Ali Road where the decree was sent for registration, the second issued by the

copying branch of the Delhi High Court and the third being a copy obtained with respect to a certified copy filed as a document in a suit by one party are a bone of contention qua the remaining cross examination of the witness. It is the case of the applicants that the three certified copies are different and according to him the tempering took place most probably when a site plan was taken out from the precincts of the Delhi High Court for being photocopied on account of the fact that photocopying facilities then available in the Delhi High Court could not have photocopied a site plan on a large size paper.

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12. From the deposition of the witness who is under cross examination and the stage of cross examination it is clear that that the tail end cross examination of the witness requires to be completed and the same would be in relation to the certified copies with which the witness would be confronted with. It would be futile to endlessly await, as already noted above, to trace the original. What view finally would be taken with respect to Schedule I and II annexed to the decree would be the judicial determination which has to follow when ones trial conclude in CS (OS) No.973/1994.”

Ld. Counsel accordingly submits that the issue regarding the correct schedule I and II would be a matter of judicial determination in CS(OS) No.973/1994.

6. Ld. Counsel for the respondent on his part submits that if the

said statement of the appellant is taken on record and accepted, he has no difficulty if the said issue is decided in CS(OS) No.973/1994 and, accordingly, he would not press prayer (i) of the prayer clause in CS(OS) No. 482/2015.

7. We take the statements made by the parties on record on the said aspect and clarify that issue with regard to Schedule I & II would be determined and decided in CS(OS) no.973/1994. The decision will be decided on the basis of evidence led by the parties. The decision it is apparent would cover and include all aspects, including the correct schedule.

8. We also clarify that the decision in CS(OS) No.973/1994 need not wait for evidence to be recorded in CS(OS) No. 482/2015 or CS(OS) No. 265/2006. (the later suit is stated to have been transferred to District Court). We clarify that CS(OS) No. 482/2015 would proceed in accordance with law with regard to prayers (ii) & (iii).

9. Counsel for the parties state that as evidence has been recorded in CS(OS) no.973/1994, the same should be disposed off as expeditiously as possible.

10. We have not expressed any opinion on merits or decided any

other aspect relating to the application filed by the appellant under Section 10 of the Code in CS(OS) No. 482/2015.

11. Appeal is disposed off in the above terms. No costs.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

APRIL 27, 2017/rc