

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

% **Date of decision: 30<sup>st</sup> January, 2020.**

+ **CS(OS) 1188/2009**

**RAVINDER PAL SINGH BAWEJA & ANR. .... Plaintiffs**

Through: Mr. Sandeep Bajaj with Mr. Soayib Qureshi,  
Ms. Shrivalli Kataria & Ms. Aditi Pundhir,  
Advs. for P-1.

Versus

**BARJINDER PAL SINGH BAWEJA & ORS. .... Defendants**

Through: Mr. Maninder Singh with Mr. Sankalp  
Kohli, Mr. Aahil Arora, Mr. Vikram Kalra  
& Ms. Aekta Vats, Advs. for D-2 with D-2  
in person.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**IA No.10646/2019(of the D-2 u/O.IX R-13 CPC for setting aside the preliminary decree dated 20<sup>th</sup> November, 2017 of partition and final decree dated 31<sup>st</sup> July, 2018 of partition)**

1. This application came up first before the Court on 5<sup>th</sup> August, 2019 when recording certain observations with respect to the conduct of the applicant/defendant no.2, the notice thereof was ordered to be issued to the plaintiffs and the defendants who were appearing in the suit.
2. Notice is reported to be served to both the plaintiffs namely Ravinder Pal Singh Baweja and Tejinder Pal Singh and the report of notice issued to defendant no.1, who alone was appearing besides the applicant/defendant no.2, is awaited.

3. The counsel for the applicant/defendant no.2 however states that the defendant no.1 has also been served and affidavit of service has been filed. The defendants no. 3 and 4 were *ex parte*.
4. The counsel for the plaintiff no.1 appears and states that a reply to the application has been filed.
5. The counsels have been heard.
6. Setting aside of the *ex parte* decree is sought on two grounds, (i) that the plaintiffs, by offering to settle and compromise the matter with the applicant/defendant no.2, made the applicant/defendant no.2 instruct her counsel to withdraw from the case, manipulating a walkover and thereafter obtained an *ex parte* decree against the applicant/defendant no.2; and, (ii) that the applicant/defendant no.2 was suffering from cancer and owing to her illness could not come to Delhi from Bangkok, where she has been living since 1971.
7. The counsel for the applicant/defendant no.2, to buttress his argument of the plaintiffs having deceived the applicant/defendant no.2 to withdraw from the suit, has drawn attention to the order dated 17<sup>th</sup> September, 2014 in the suit, recording the statement of the counsel for the plaintiffs that the matter had been settled with the defendants and asking for the matter to be placed before the Court. It is stated that the applicant/defendant no.2 was the only contesting defendant to the suit.
8. Vide order dated 17<sup>th</sup> September, 2014 of the Joint Registrar, after recording the statement aforesaid of the counsel for the plaintiffs, the matter was ordered to be listed before the Court on 27<sup>th</sup> October, 2014.
9. I have drawn the attention of the counsel for the applicant/defendant no.2 to the order dated 27<sup>th</sup> October, 2014, which records the statement that

the plaintiff no.2 had withdrawn from the settlement. Vide the said order, the matter was again posted before the Joint Registrar for scheduling the date(s) of trial.

10. The suit was thereafter listed for evidence of the plaintiffs on 26<sup>th</sup> March, 2015, when testimony of PW3 was recorded and on request of the counsel for the applicant/defendant no.2 for adjournment to cross-examine, opportunity was given subject to payment of costs. On the next date of hearing i.e. 27<sup>th</sup> May, 2015 before the Joint Registrar, again adjournment was sought stating that the parties were trying to settle the matter and on the very next date i.e. 31<sup>st</sup> October, 2015 the matter was again adjourned for reporting of settlement and in the alternative, for recording of evidence. Ultimately on 4<sup>th</sup> April, 2016 none appeared for the applicant/defendant no.2 and the suit was again placed before the Court on 12<sup>th</sup> May, 2016. Vide order dated 30<sup>th</sup> August, 2016, the suit was posted for arguments in the category of 'Short Cause'. Vide order dated 30<sup>th</sup> March, 2017, though none appeared for the applicant/defendant no.2 on that date, opportunity was given to the applicant/defendant no.2 to lead evidence. The counsel for the applicant/defendant no.2, on 26<sup>th</sup> May, 2017 stated that the applicant/defendant no.2 wanted to lead evidence and time for filing affidavit by way of examination-in-chief was granted. However, no affidavit was filed and vide order dated 28<sup>th</sup> August, 2017 another last opportunity was granted for filing affidavit, subject to payment of costs. Finally on 17<sup>th</sup> October, 2017, the counsel for the applicant/defendant no.2 stated that he had instructions from the applicant/defendant no.2 to withdraw from the suit. Since no evidence had been led by the defendants, the evidence of the applicant/defendant no.2 was closed and the matter was

posted for arguments and preliminary decree for partition and thereafter final decree for partition as aforesaid passed.

11. The aforesaid narrative of proceedings falsifies the stand of the applicant/defendant no.2, of the applicant/defendant no.2 having been deceived by the plaintiffs for withdrawing from the defence to the suit, on the pretext of compromise. Even though on earlier occasions as per the orders in the suit, there were compromise talks and settlement arrived at between the parties, but a subsequent order also records that no settlement had been reached. At the time when the applicant/defendant no.2 instructed her Advocate to withdraw from the case and which is admitted in this application also, the applicant/defendant no.2 had defaulted in cross-examining PW3 and in leading her own evidence in spite of opportunities having been given therefor. Thus, the first of the grounds averred is not made out and rather is found to have been fabricated.

12. As far as the second ground, of illness of the defendant no.2 is concerned, the counsel for the plaintiffs, on enquiry states that the applicant/defendant no.2 was afflicted with cancer in 1997 which had relapsed in the year 2007.

13. This suit was instituted only in the year 2009 and which the applicant/defendant no.2 was contesting in spite of her affliction aforesaid. Thus the second ground urged is also not found to be made out.

14. It is not the *ipse dixit* of the litigant, merely because settled abroad, to, as and when chooses, contest and as and when chooses, stop appearing in the suit and to, again, when convenient, approach the Court for undoing what has been done in the interregnum. It is such impressions which encourage/lead litigants to continue litigation, causing litigations to remain

pending in the Courts indefinitely. Moreover, the grounds urged by the applicant/defendant no.2 for setting aside of the *ex parte* decree having been found to be false and contrary to record and not made out, the applicant/defendant no.2 is even otherwise not entitled to any indulgence.

15. I had, to satisfy my judicial consciousness, in the order dated 5<sup>th</sup> August, 2019 where the application first came up before this Court, recorded as under, on the matter in controversy in the suit:

*“6. The only issue in the suit was of the Relinquishment Deed executed by the applicant/defendant No.2 in favour of her mother and brothers on 15<sup>th</sup> December, 1964 / 11<sup>th</sup> January, 1965.*

*7. The counsel for the applicant/defendant No.2 has himself argued that the applicant/defendant No.2 was 19 years of age at the time. At that age, it is believable that the applicant/defendant No.2, at the mere asking of her mother and brothers, would execute the Relinquishment Deed and it appears that the denial of signatures thereon now and the argument that there was no reason for the applicant/defendant No.2 to relinquish without consideration, appears to be false. Moreover, the counsel for the applicant/defendant No.2 also agrees that the question of the applicant/defendant No.2, at that age when she was provided for by her mother and brothers, asking for consideration from them, for relinquishing her share, did not arise.”*

Therefrom also I am satisfied that no injustice is being done to applicant/defendant no.2.

16. The application is dismissed.

**RAJIV SAHAI ENDLAW, J**

**JANUARY 30, 2020**

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