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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 650/2008, IA No.13512/2015 (u/O XII R-6 CPC), IA
No.157/2017 (u/S 151 CPC) & IA No.7335/2017 (u/S 151 CPC)
GIRDHARI LAL BATRA Plaintiff

Through: Mr. Arun Srivastava, Mr. Pramod
Dayal, Mr. Rajesh Bansal, Mr. Rohan
Alva, Mr. Ashish Moha, Mrs. Ritu
Bansal, Mrs. Anupama Srivastava,
Ms. Ridhima Bansal, Mr. Raghav
Bansal & Mr. Reshabh Bajaj, Advs.

Versus

KRISHAN LAL BATRA & ORS. Defendants

Through: Mr. Akshay Makhija, Adv. for LR's of
D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.11.2018**

1. This order is in continuation of the earlier order dated 12th November, 2018.
2. The counsel for the legal heirs of defendant no.3 states that the legal heirs of defendant no.3 are not willing to purchase the 7/9th share of Ombir Creation Pvt. Ltd. at the valuation as ordered and would be preferring an appeal.
3. The counsel for the Ombir Creation Pvt. Ltd. states that he will be filing an application for review of para no.22 of the order dated 12th November, 2018.
4. Para no.22 of the order dated 12th November, 2018 records what had transpired in the Court during the hearing on 12th November, 2018 and what

the counsel for Ombir Creation Pvt. Ltd. is now stating, “that notwithstanding the concession as recorded therein of Ombir Creation Pvt. Ltd., the question of applicability of Section 4 of the Partition Act, 1893 being a legal question, it remains open to Ombir Creation Pvt. Ltd. to wriggle out of the concession made”, is found to be *mala fide*.

5. I may record that the order was dictated in open Court and it is only the case law, particularly that quoted in para no.20 of the order, which was filled in later, finding the issue to be an issue of general importance and there being no comprehensive dicta on the same. It seems that Ombir Creation Pvt. Ltd. and its counsel, after going through the said case law, are having a change of heart and which cannot be permitted.

6. The counsel for the legal heirs of defendant no.3, on enquiry as to what is the next stage once they have refused to purchase at the valuation determined, states that a Commissioner be appointed to partition the property by metes and bounds.

7. The said contention is also found to be *mala fide*. As already recorded in the order dated 12th November, 2018, in the order dated 10th July, 2015 passing a preliminary decree for partition itself, it was recorded that there was a possibility of one or more of the parties buying the property or they can bring a buyer for the property, meaning that the property was impartible by metes and bounds. The said order has attained finality and no challenge was made by the defendant no.3 or his legal heirs thereto. On the contrary, the legal heirs of the defendant no.3 also exercised their right under Section 4 of the Partition Act and which was again on the premise that the property was/is a dwelling house and impartible by metes and bounds.

No litigant can be permitted to so keep the *lis* pending by taking inconsistent stand from time to time and blowing hot and cold.

8. The counsel for the legal heirs of defendant no.3 however states that no further proceedings be undertaken and the proceedings be held over till an appeal is preferred against the order dated 12th November, 2018 which was uploaded on the website of this Court only yesterday.

9. The proceedings cannot be held over merely on the ground that a litigant wants to prefer an appeal. It is such conduct which leads to delays in disposal and gives a leeway to the litigants to, on the one hand stall the implementation of the order and on the other hand delay the filing of the appeal.

10. Mr. Arun Srivastava, Advocate today appearing for Ombir Creation Pvt. Ltd. now states that Mr. Vijay K. Gupta, Advocate who had argued on 12th November, 2018 had given the concession as recorded in para no.22 of the order 12th November, 2018 contrary to instructions and pleadings.

11. Mr. Vijay K. Gupta, Advocate is not present in the Court. On the contrary the appearance given on 12th November, 2018 mentions the name of Mr. Rajesh Bansal, Advocate before Mr. Vijay K. Gupta, Advocate. Mr. Rajesh Bansal, Advocate is present in Court and states that Mr. Vijay K. Gupta, Advocate had argued the matter on 12th November, 2018. A perusal of the appearance given on 12th November, 2018 shows Mr. Arun Srivastava, Advocate also to have been present in the Court and he affirms that he was present in the Court on 12th November, 2018. Mr. Arun Srivastava, Advocate states that he also acted contrary to instructions of the client.

12. The remedy if any of Ombir Creation Pvt. Ltd. is against the nearly half a dozen counsels present on its behalf in the Court on 12th November, 2018 and they cannot be permitted to take the Court for a ride in this manner.

13. Since the legal heirs of defendant no.3 have not exercised the option of purchase, there is no option but to pass a final decree for partition of the property no.43A Rajpur Road, Civil Lines, Delhi, by sale thereof and by distribution of sale proceeds amongst Ombir Creation Pvt. Ltd. and legal heirs of defendant no.3 in the ratio of 7/9th share and 2/9th share respectively. A decree is accordingly passed. It is further ordered that on such sale, vacant, peaceful physical possession of the property will be delivered to the purchaser by dispossessing whosoever, whether Ombir Creation Pvt. Ltd. or legal heirs of defendant no.3, from the respective portions in their possession, as if in pursuance to a decree for recovery of possession.

14. Decree sheet be drawn subject to payment of stamp duty.

RAJIV SAHAI ENDLAW, J

NOVEMBER 28, 2018

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