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

***Date of Decision: 12<sup>th</sup> April, 2018***

+ **RFA 500/2016 & CM APPL.26671/2016**

**SOHAN LAL**

..... Appellant

Through: Mr. Bharat Sharma & Mr. Tala  
Chand, Advocates (M-9818699048).

versus

**JAMUNAWATI & ORS**

..... Respondents

Through: Mr. Somak Mukhopadhyay, Advocate  
for R-5,7,14,15 & 16 (M-  
9818901745).

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This is an appeal against the final judgment/decreed dated 16<sup>th</sup> March, 2016 passed by the Trial Court wherein a final decree has been passed in the following terms:

*“5) In the instant case, admittedly the suit property cannot be partitioned by meets and bounds, therefore, in these circumstances, I find no other option except to put the suit property to auction/sale. Ordered accordingly. Hence, the final decree is passed amongst parties to the suit in respect of the suit property bearing no. H. No. 16/347, Gali No. 3, Bapa Nagar, Pyare Lal road, Karol Bagh, New Delhi-110005, as per their declared shares in preliminary decree dated 17.09.2015 and further it is ordered that the parties would be entitled to their respective shares from the sale proceeds after deducting all necessary expenses in auctioning the property and*

*consequential expenses. Parties shall bear their own costs.”*

2. Admittedly, a preliminary decree was passed vide judgment dated 17<sup>th</sup> September, 2015 by which property bearing no. 16/347, Gali No. 03, Bapa Nagar, Pyare Lal Road, Karol Bagh, New Delhi-110005 was directed to be partitioned in favour of the Legal Heirs of Late Sh. Rati Ram in the following terms:

*“1. Vide judgment dated 17.09.2015, this court had declared and passed the preliminary decree of partition to the effect that the legal heirs of Late Rati Ram viz. (i) Smt. Jamunawati, (ii) Sh. Tika Ram, (iii) Sh. Sohan Lal, (iv) LRs of Sh. Nand Kishore (deceased), (v) LRs of Sh. Trilok Chand (deceased) and (vi) LRs of Smt. Shakuntala (deceased) to the suit shall have 1/6th equal share each in the suit property bearing no. H. No. 16/347, Gali No. 3, Bapa Nagar, Pyare Lal road, Karol Bagh, New Delhi-110005. All the parties were restrained from selling or creating any third party interest in the suit property till the final disposal of this suit.”*

3. On a query by the Court, learned counsel for the Appellant submits that no appeal was preferred challenging the preliminary decree dated 17<sup>th</sup> September, 2015 and the present appeal is directed only against the final decree by which the Court has directed auctioning of the property. In the absence of a challenge to the preliminary decree of partition, as per Section 97 of the CPC, in an appeal against the final decree, the findings of the preliminary decree cannot be assailed. In the present case, the shares of the various parties have been determined by the Preliminary decree which has not been challenged. The final decree merely directs the auction. No

arguments on the merits of the final decree, i.e., to the existence of any other mode of partition was addressed by the Appellant. In ***Ganduri Koteshwaramma & Anr. v. Chakiri Yanadi & Anr. (2011) 9 SCC 788*** it was held by the Supreme Court that in an appeal against the final decree, the Court may modify the Preliminary decree, if there are changed circumstances. The Supreme Court observed:

*“20. Section 97 CPC that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.”*

4. However, no changed circumstances have been pleaded or argued in the present appeal. The scope of an appeal against the final decree is limited, as the final decree merely implements the preliminary decree which has attained finality. Section 97 of the CPC squarely applies.

5. Under these circumstances, the present appeal and pending applications are dismissed.

**PRATHIBA M. SINGH**  
**Judge**

**APRIL 12, 2018**  
*Rahul*