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

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Date of Judgment: 10th April, 2019

+ **RFA(OS) 25/2019**

VIRENDER SINGH

..... Appellant

Through: Mr. Yusuf Khan, Advocate with
appellant in person.

versus

SATYENDRA SINGH

..... Respondent

Through: Mr. Manish Tanwar, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

C.M. Appl. No. 12540/2019 (for delay)

1. This is an application seeking condonation of delay of 246 days in filing the appeal.
2. Learned counsel for the respondent enters appearance.
3. The prayer made in this application is not opposed.
4. The delay of 246 days in filing the appeal is therefore condoned.

C.M. stands disposed of.

RFA(OS) 25/2019 and C.M. Appl. No.12538/2019 (for stay)

5. The challenge in this appeal is to the order dated 5th March, 2018 by which the final decree of partition has been passed. Challenge is also being made to the order dated 22nd October, 2018 by an application seeking clarification/modification of the order of 5th March, 2018 was dismissed by the learned Single Judge of this Court.

6. The brief facts to be noticed for the disposal of the appeal are that the plaintiff (appellant herein), had filed a suit for partition with respect to property bearing no. K-6, Rangpuri Road, Mahipalpur, New Delhi-110037, situated on a plot of land measuring 492.34 sq. yards. A consent order was passed on 5th March, 2018. Parties had agreed that portion 'A' would fall to the share of the plaintiff and portion 'B' would fall to the share of the defendant. Additionally, it was agreed that the plaintiff would pay a sum of Rs.20,00,000/- to the defendant for an area in excess.

7. Subsequently, the plaintiff filed I.A. No. 10347/2018 seeking modification of the order with respect to payment of Rs.20,00,000/- by the appellant/plaintiff to the defendant. This application was rejected primarily on the ground that the order in question was a consent order and merely by change of Advocate, the order could not be modified and more so the orders obtained by making statements cannot be changed from time to time as there would be no end to litigation.

8. The main crux of argument of learned counsel for the appellant is that the appellant/plaintiff had offered to pay Rs.20,00,000/- on the

assumption that he was getting excess area and to compensate for the excess area he had agreed to pay Rs.20,00,000/- to the respondent/defendant. However, the area is not in excess and thus the respondent/defendant would not be entitled to Rs.20,00,000/-.

9. Per contra, counsel for the respondent submits that there is no infirmity either in the order passed on 5th March, 2018, which is a consent order, or the order dated 22nd October, 2018. He submits that the parties were present all along and the statement was made after understanding and ascertaining the factual position.

10. We have heard learned counsels for the parties.

11. Since the order dated 5th March, 2018 is a short order, we deem it appropriate to reproduce the same:-

“1. Counsels for the parties have been heard. Parties are also present in person and they also have been heard.

2. After submissions were made it is agreed that and accordingly the suit is disposed of by passing a final decree with respect to the property bearing no.K-6, Rangpuri Road, Mahipalpur, New Delhi-110037 situated on a plot of 492.34 sq yds by giving to the plaintiff Sh. Virendra Singh the portion Mark ‘A’ as per the report and plans filed on 17.5.2017. Portion ‘B’ will go the defendant Sh. Satyendra Singh in the suit with a payment of Rs.20 lacs to be made by the plaintiff to the defendant in view of the fact that portion ‘A’ contains a larger area than portion ‘B’.

3. I may note that for equalization principle called as owelty under Order 26 Rule 14 of Code of Civil Procedure, 1908 (CPC) entitles payment of amount by one party to the other for equalization of shares. This amount of Rs.20 lacs will be paid by the plaintiff to the

defendant within four months. If the amount of Rs.20 lacs is not paid within four months, then, after expiry of four months the amount of Rs.20 lacs will carry interest @ 12% per annum simple and execution proceedings can be initiated by the defendant for recovery of such amount. On payment of amount of Rs.20 lacs by the plaintiff to the defendant, the rights of the parties will stand crystallized in terms of the Local Commissioner's report dated 17.5.2017 alongwith the accompanying plans and the portions 'A' and 'B' as per the plans and as already stated above.

4. Final decree is accordingly drawn up in terms of aforesaid order. Of course, final decree will be drawn up on the parties complying with payment of stamp duty as required by Article 45 of Schedule I of the Stamp Act, 1899.

5. Suit is accordingly disposed of and a final decree is accordingly passed with respect to property bearing no.K-6, Rangpuri Road, Mahipalpur, New Delhi-110037 as stated above in terms of aforesaid observations.”

12. A reading of this order would show that the order is a consent order. The presence of the appellant/plaintiff is also recorded in the order. Based on the statement made, the aforesaid order was passed.

13. At this stage to say that the appellant was not aware of the area being in excess cannot be accepted or cannot be a ground to modify or set aside the order passed by the consent of the parties.

14. We find no infirmity in the view taken by the learned Single Judge in his order on 22nd October, 2018, for the reason that simply stating that the appellant herein was not aware of the area being the same or in excess, cannot be a ground to seek modification of the consent order, which was passed in the presence of the parties.

15. We find no grounds to entertain this appeal. The appeal and C.M. Appl. No.12538/2019 is accordingly dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

APRIL 10, 2019/AK

