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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO (OS) 88/2018 & CMs 23220/2018, 48640/2018 and 50824/2018

LATA SETH & ORS.

..... Appellants

Through: Mr. Tanmay Mehta, Mr. Raghav
Wadhwa and Mr. Siddharth Kumar
Singh, Advocates.

versus

NARINDER NATH SETH & ORS.

..... Respondents

Through: Mr. Siddharth Yadav, Advocate for
R-5 (a) to (d).
Mr. Gaurav Puri, Advocate for R-1 to
R-4.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

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23.10.2019

1. This appeal is directed against an order dated 6th April, 2018 passed by the learned Single Judge, dismissing I.A. No. 9138/2016, filed by the present Appellants, under Order XX, Rule 18 (2) of the Code of Civil Procedure, 1908 ('CPC') in C.S. (OS) No. 2658/1999, for modification of the preliminary decree dated 8th February, 2012.

2. The aforementioned suit was filed by the Respondent Nos. 1 to 4 for partition of the properties at 33/5, East Punjabi Bagh, New Delhi and Shop No. 48, Khursheed Market, Sadar Bazar, Delhi, among the legal heirs of late Laxmi Narain Seth. The said suit was filed against the Appellants as well as the Respondent Nos. 5 (a) to (d), and 6 (a) to (f) in the present appeal.

3. The brief background facts are that late Laxmi Narain Seth, who owned

the aforementioned properties, had three sons and a daughter i.e. Kedar Nath Seth, who died on 23rd May 1989, Manmohan Seth, who died on 21st June 1990, Krishan Lal Seth and Mrs. Kamla Chopra, both of whom also died during the pendency of C.S. (OS) No. 2658/1999. Kedar Nath Seth died intestate, leaving behind the Plaintiffs i.e. Respondent Nos. 1 to 5, as his legal representatives ('LRs').

4. The Appellants, who were Defendant Nos. 1 to 5 in the suit, are the sons and daughters of late Manmohan Seth. Defendant Nos. 6 (a) to (d), who are Respondent Nos. 5 (a) to (d) in the present appeal, represent the branch of Krishan Lal Seth, and Defendant Nos. 7 (a) to (f) in the suit, who are Respondent Nos. 6 (a) to (f) in this appeal, are the LR's of late Mrs. Kamla Chopra.

5. In the said suit, on 8th February 2012, a learned Single Judge of this Court, passed a preliminary decree holding that only two properties were liable to be partitioned: the aforementioned house at East Punjabi Bagh and Shop No. 48, Khursheed Market, Sadar Bazar, Delhi. A preliminary decree of partition was passed, holding that one third of the share of aforesaid properties was liable to devolve upon Plaintiff Nos. 1 to 4, one third upon Defendant Nos. 1 to 5 and one third upon Defendant Nos. 6 (a) to (d). A Deputy Registrar of this Court was appointed as Local Commissioner ('LC') to explore the possibility of partition by metes and bounds, or by other legally permissible modes.

6. Aggrieved by the above order, the present Appellants, who are the LR's of late Manmohan Seth, filed R.F.A. (OS) No. 41/2012. In the appeal, it was

noted that the estate of the deceased consisted of not only the house at East Punjabi Bagh, but also the Shop Nos. 17, 48 and 123, Khursheed Market, Sadar Bazar. It is noted that Shop No. 123, Khursheed Market had been sold by the Plaintiffs after the suit was instituted, resulting in third-party rights being created. Shop NO.17, Khursheed Market was sold off by Krishan Lal Seth group of Defendants.

7. The Division Bench ('DB'), while affirming the preliminary decree passed by the learned Single Judge, modified it to the extent of directing that the said three shops in Sadar Bazar and the house at Punjabi Bagh were liable to be partitioned, in which the share of the Plaintiffs, Defendant Nos. 1 to 5 jointly, and Defendant Nos. 6 (a) to (d) jointly, was one third each. The DB appointed a learned Advocate as LC to record evidence pertaining to the valuation of the three shops and the house and submit a report.

8. The aforementioned decision of the DB was challenged by the present Appellants by way of S.L.P. (Civil) No. 5208/2013 in the Supreme Court. On 15th February 2013, an order was passed by the Supreme Court stating that it was in the interest of all the parties that the matter be brought to an end by way of an amicable settlement. On the following date i.e. 18th March, 2013, the Supreme Court urged the parties to go before the Supreme Court Mediation Centre and attempt a settlement.

9. On 1st May, 2013, a family settlement was executed between the parties, in terms of which it was agreed that the two properties which would be available for partition would be the house at East Punjabi Bagh and Shop No. 48, Khursheed Market and that the share of each party would be as

follows:

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|-------|--|----------|
| (i) | The First Party (the Appellants) | : 36.75% |
| (ii) | The Second Party [Respondents 1 to 4] | : 31.75% |
| (iii) | And third party [Respondents 5 (a) to (d)] | : 31.5% |

10. It was further agreed that since the shop at Khursheed Market was currently being occupied by the First Party, the value thereof would be assessed at Rs. 1 crore and the First Party would compensate the Second Party to the tune of Rs. 31.75 lacs and the Third Party to the tune of Rs. 31.5 lacs from the sale proceeds to be received upon the sale of the residential property at East Punjabi Bagh.

11. It was further agreed between the parties that they would make an effort to execute the sale deed for the sale of the East Punjabi Bagh property on or before 30th September 2013, but no later than 30th October, 2013. In the event that the sale deed failed to be executed by that date, the settlement agreement would be considered “null and void”.

12. As it transpired, those deadlines could not be met. One day after the aforesaid settlement was reached, when the S.L.P. (Civil) No. 5208/2013 was listed before the Supreme Court i.e. on 2nd May, 2013, the present Appellants stated that they wished to withdraw the S.L.P., and accordingly the S.L.P. was dismissed as withdrawn. As rightly noted by the learned Single Judge in the impugned order, the Appellants did not get the Supreme Court to record in the aforementioned order that the S.L.P. was being withdrawn in view of the settlement between the parties. For some reason, the Appellants did not go back to the Supreme Court with an application

seeking modification of the order dated 2nd May 2013 to incorporate a reference to the settlement.

13. Nearly three years after the execution of the family settlement, the aforementioned application I.A. No. 9138/2016 was filed by the present Appellants in the suit, on 29th July 2016, seeking modification of the preliminary decree dated 8th February, 2013.

14. The learned Single Judge has by the impugned order declined to entertain the application holding that the intention of the parties in executing the family settlement was clear. It was conditional upon steps being taken in a time-bound manner, failing which the settlement would come to an end and the parties would be bound by the preliminary decree of partition already passed. It was observed that it was only because of this that the S.L.P. was agreed to be withdrawn.

15. Having heard Mr. Tanmay Mehta, learned counsel appearing for the Appellants, Mr. Siddharth Yadav, learned counsel appearing for the Respondent Nos. 5 (a) to (d) and Mr. Gaurav Puri, learned counsel appearing for the Respondent Nos. 1 to 4, the Court is unable to find any reason to come to a conclusion different from the one reached by the learned Single Judge.

16. Mr. Mehta pointed out that there were some statements in the impugned order which were factually erroneous. He referred to the first sentence in para 28 which states that it was the Appellants (Defendant Nos. 1 to 5 in the suit) “who are in possession of all the properties and enjoying benefit

thereof.” It is not disputed by the parties before the Court that the Appellants are occupying the first floor of the East Punjabi Bagh property and have access to the terrace, whereas the Respondents 1 to 4 and 5 (a) to (d) herein are sharing the ground floor of the said premises.

17. It is next submitted by Mr. Mehta that the learned Single Judge was not justified in observing that the conduct of the present Appellants, in having filed the application after 33 months of the execution of the family settlement, showed their ‘mala fides’.

18. There appears to be some justification in the above submission. While indeed the application was belated, there is nothing on record to indicate that the Appellants acted ‘mala fide’ in doing so.

19. Barring the above two aspects, the Court is of the view that the impugned order of the learned Single Judge does not call for interference. With the preliminary decree, as modified by the DB, having attained finality with the dismissal of S.L.P. (Civil) No. 5208/2013, the parties are now bound to act in accordance with the judgment of the DB.

20. The appeal is accordingly dismissed in the above terms. The pending applications are also disposed of. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 23, 2019/*rd*