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

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Judgment delivered on: 29.08.2019

+ C.R.P. 258/2017

NEHA SINGH

..... Petitioner

versus

RITA SINGH & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms.Shilpa V.George, Adv

For the Respondent : Mr.B.S.Banthia, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.42489/2017

Petitioner seeks condonation of delay of 15 days in filing the petition. It is contended that the case file got misplaced in the office of the counsel for the petitioner on account of certain administrative improvements being done in the office. Subsequently, when the file was discovered the same was filed with the delay of 15 days.

There is no serious opposition to the application. Application is allowed.

Delay in filing the revision petition is condoned.

C.R.P. 258/2017

1. Though office report indicates that respondent No.3 has not been served. Learned counsel has entered appearance for all the respondents and has filed his vakalatnama.

2. Petitioner impugns order dated 28.08.2017 whereby the application of the petitioner under Order 9 Rule 13 seeking setting aside of ex-parte decree dated 25.07.2013 has been dismissed.

3. The application has been dismissed primarily on the ground that the decree was passed on 25.07.2013 and application has been filed on 02.03.2015 beyond the period of limitation without an application seeking condonation of delay. Further, it is held that the applicant was not a party to the suit in which the consent decree was passed and the Court could not in said application make an enquiry as to whether she (applicant's mother) was the wife of the deceased petitioner or not or whether the plaintiff had converted to Islam or as to the validity of the second marriage of the plaintiff.

4. The brief facts of the case are that plaintiff Sh. Deepak Singh Robinson filed a Suit for declaration and cancellation (of gift deed in favour of Defendant) and for permanent injunction against the respondent No.3 herein i.e. *Terrel Francis Lobo*.

5. During the pendency of the suit Sh. Deepak Singh Robinson expired. His wife and son i.e. respondent Nos. 1 & 2 sought

substitution and continued the suit thereafter. Subsequently there was a settlement between the respondent Nos.1 & 2 as legal heirs of the original plaintiff and respondent No.3 the original defendant, pursuant to which consent decree was passed on 25.07.2013.

6. It was agreed as per the decree that the suit property would be sold and the sale proceeds divided between the respondent Nos.1 & 2 (legal heirs of original plaintiff) on the one side and respondent No.3 (original defendant) on the other.

7. Subject application under Order 9 Rule 13 CPC was filed by the petitioner contending that she is the daughter of the original plaintiff from his previous wife and would also have inherited to the estate of Sh. Deepak Singh Robinson and any settlement or distribution of his estate without an appropriate share being given to the petitioner would be null and void. It was also alleged that a fraud had been played on the court by not disclosing that the petitioner was also a legal heir.

8. Subject application was filed under Order 9 Rule 13 CPC contending that she was not a party to the suit or the settlement and became aware of the decree on 25.01.2015, when she made an enquiry about the property at Vasant Kunj. It is only thereafter that she realised that a fraud had been played and the petitioner who was also a legal heir of Sh. Deepak Singh Robinson was not impleaded or given her share and the settlement was arrived at behind her back to sell her father's property and distribute the sale consideration.

9. Subject application was filed on 22.02.2015 i.e. within 30 days of the knowledge of the decree.

10. It is not in dispute that petitioner is the daughter of Sh. Deepak Singh Robinson, however, the case of the respondent is that he had divorced his first wife. In my view divorce is inter-se husband and wife and does not in any manner affect the rights of children. Accordingly, merely because there was a divorce between Sh. Deepak Singh Robinson and the mother of the petitioner would not in any manner affect the rights of the petitioner.

11. Further, the reasoning given by the Trial Court that the application was beyond time is also not sustainable in as much as the petitioner in her application under Order 1 Rule 13 CPC has categorically stated that she became aware of the decree on 25.01.2015 and she filed the subject application on 22.02.2015, within a period of 30 days of becoming aware of the decree. There is no challenge to the averment that she became aware of the decree only on 25.01.2015.

12. Accordingly, the findings of the Trial Court that the application was delayed and was not supported by an application for condonation of delay is not sustainable. Since the application is filed within a period of 30 days of the knowledge of the decree so no application seeking condonation of delay was required to be filed.

13. Admittedly, petitioner was not a party to the proceedings, however, parties to the suit by the consent decree have sought to transfer the property owned by the father of the petitioner and divide the sale proceeds. She has been excluded of a share of the said property. The rights of the petitioner are clearly affected by the consent decree and as such she is entitled to challenge the decree and contest the suit.

14. In view of the above, the impugned order dated 28.08.2017 is set aside. Further, in view of the reasons as noticed above, the consent decree dated 25.07.2013 is also set aside. The suit is restored to its original number. The petitioner is impleaded as defendant No.2 to the suit.

15. Plaintiff shall file an amended memo of parties before the Trial Court within one week of the next date before the Trial Court.

16. List the suit before the Trial Court for directions on 24.09.2019.

17. Petition is accordingly allowed in the above terms. No order as to costs

18. Order *dasti* under signatures of the Court Master.

AUGUST 29, 2019
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SANJEEV SACHDEVA, J