

\$~Suppl.-9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA (OS) 8/2021**

MRS. KAMALJIT KAUR ALIAS

MRS. SURESH KUMARAppellant

Through: **Mr. Hemant Malhotra with**
Mr. Rovins Francis Verma,
Advocates

Versus

MR MANINDER SINGH & ANR.Respondents

Through: **Ms. Gurmeet Bindra, Advocate**

% **Date of Decision: 15th February, 2021**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

CM APPL. 5759/2021

Allowed, subject to just exceptions.

CM APPL. 5758/2021

Keeping in view the averments in the application, the delay in filing the appeal is condoned.

Accordingly, the application stands disposed of.

RFA (OS) 8/2021 & CM APPL. 5757/2021

1. Present appeal has been filed challenging the order dated 23rd January 2020 whereby a preliminary decree of partition of the property had been passed by the Ld. Single Judge.

2. Learned counsel for the appellant states that the learned Single Judge had erred in exercising her power under Order XII Rule 6, CPC. He submits that the impugned order was passed on the assumption that Sardarni Harbans Kaur had died intestate. He emphasises that the Single Judge ought to have taken into consideration that the division of the property was to take place as the property left behind by late Sardar Jagmohan Singh, who is the brother of the Appellant and not as the property of late Sardarni Harbans Kaur and in such an event, no legal right arises in favour of the respondent/plaintiff.

3. He submits that the learned Single Judge erred in treating the non-production of the original will as an admission by the appellant of the non-existence of the registered will. He points out that the photocopy of the will was duly placed on record which was ignored by the learned Single Judge.

4. *Per contra*, learned counsel for respondent/plaintiff states that the impugned order dated 23rd January, 2020 was a consensual order. She states that subsequently on 15th July, 2020 and 11th December, 2020 the appellant had reiterated her consent and had even stated that she will coordinate with the Local Commissioner in execution of the sale deed and other necessary documents. She has, today in Court, handed over a copy of the order dated 11th December, 2020.

5. In rejoinder, learned counsel for the appellant states that the earlier counsel had misguided the appellant and suppressed material facts from her.

6. A perusal of the order dated 11th December, 2020 reveals that on the said date, the appellant's counsel in the presence of the appellant had

stated, in virtual hearing, that the appellant would cooperate with the Local Commissioner for execution of the sale deed and other necessary formalities. Consequently, the appellant is today estopped from contending to the contrary.

7. In any event, on a perusal of the order dated 15th July, 2020 and 11th December, 2020, this Court is of the view that the impugned order was a consensual order.

8. We are also not able to comprehend as to why the said order of dated 11th December, 2020 had not been placed on record by learned counsel for the appellant, especially considering the fact that present matter is a Regular First Appeal and the entire trial court record should have been filed.

9. Further, as the appellant has not filed an application for review of the order dated 23rd January, 2020, this Court is of the view that the impugned order calls for no interference. Accordingly, the present appeal and application are dismissed.

MANMOHAN, J

ASHA MENON, J

FEBRUARY 15, 2021

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