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

+ RFA(OS) 13/2021

MS. DEEPSHREE SINGH Appellant
Through: Mr. Ankur Mahindro, Advocate with
Mr. Rohan Taneja, Advocate.

versus

SH. RISHI PRATAP SINGH & ORS. Respondents
Through: Ms. Kritika Bhardwaj, Advocate for
R-1 to 3 & 5 to 8.

% Reserved on : 12th April, 2021
Date of Decision : 20th May, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J:

CM APPL. 13954/2021

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

RFA(OS) 13/2021 & CM APPLs. 13952/2021, 13953/2021

1. The present case reflects the bane of the Indian judicial system, namely, that there is no finality attached to any judicial proceeding. Litigants think that they can '*hop on and hop off the case*' at any stage without any consequence using the slogan '*pure justice*'.

2. It is pertinent to mention that present appeal has been filed challenging the judgment and decree dated 18th November, 2013 passed by a learned Single Judge of this Court in CS (OS) No 1996/2008, accompanied by an application being C.M.No.13952/2021 seeking condonation of delay of two thousand three hundred and thirty one (2331) days under Section 14 of the Limitation Act, 1963.

3. By virtue of the impugned order and judgement, the learned Single Judge was pleased to allow the compromise application filed by the contesting parties and to decree the Civil Suit. The impugned order and judgement dated 18th November, 2013 passed in CS(OS) 1996/2008 is reproduced hereinbelow:-

“IA No.18213/2013 (Under order XXIII Rule 3 r/w Section 151 CPC)

[The settlement is taken on record and the suit is disposed of in terms of the settlement arrived at between the parties.

The application is disposed of.

CS(OS) 1996/2008

Defendant nos.2, 3, 4A, 4B, 6, 7 and 8 have been proceeded ex-parte vide order dated 27.04.2011. The matter has been settled between the plaintiff and defendant nos.1 & 5. Plaintiff and defendant no.5 are present in court. The Affidavit of defendant no.1 in support of application being IA No.18213/2013 is already on record. The parties have settled the matter on the following terms:-

(a) That the plaintiff does not press for his claim that Dr.Chander Kanta Khan was not entitled to 50% share of 1/9th share of 1/6th share relinquished by Smt.Tara Mani Singh. Dr. Chander Kanta Khan will be entitled to 50% share of 1/9th share of 1/6th share of late Shri Shiv Dayal Singh in the suit property. Dr. Chander Kanta Khan will pay a sum of Rs.15,00,000/= [Rupees Fifteen Lacs only] to Smt. Tara Mani Singh on the sale of hear 50% share of 1/9th share of late Shri Shiv

Dayal Singh in the suit property.

(b) That Dr.R.S. Chauhan, the defendant no.5 herein, had not signed on the original Family Settlement Deed dated 23rd December, 1999. Dr.R.S.Chauhan has got no objection if the Relinquishment Deed executed by Smt.Tara Mani Singh in respect of her share in the suit property in favour of Dr.R.S. Chauhan is revoked. It has further been agreed among the parties that Dr.R.S. Chauhan will deem to have signed on the original Family Settlement Deed dated 23rd December, 1999.

(c) That Dr.R.S.Chauhan will continue to reside in 1/6th portion of late Shri Shiv Dayal Singh till the sale of the entire suit property.

(d) That the parties have further agreed that 1/6th share of late Shri Shiv Dayal Singh shall be sold as one unit along with remaining 5 units in the suit property.

(e) That every effort will be made to sell the suit property to the highest bidder on or before 31st March 2014.

(f) That each of the shareholders of the suit property will be entitled to get the sale proceeds of the suit property in proportion to their respective shares. As already mentioned above, Dr. Chander Kanta Khan will be paying a sum of Rs.15,00,000/= [Rupees Fifteen Lacs only] to Smt. Tara Mani Singh at the time of the sale of the suit property.

(g) That one portion of the suit property is in occupation of J D Tytler School, which has fallen to the share of Dr.R.S. Chauhan, defendant no.5 herein. The parties will make joint efforts to get the said portion vacated from the said tenant.

(h) That the entire expenditure to be incurred for getting the said portion in occupation of J D Tytler School vacated will be shared equally by the parties in equal proportion to their respective shareholding in the suit property except Shri J S Chauhan. The expenditure to be incurred on behalf of Shri J S Chauhan will be incurred by Dr. R.S. Chauhan on his behalf.

(i) That the expenditure to be incurred on behalf of Smt. Deepshree Singh will be borne by the defendant nos.1, 2, 5 and 6 in equal proportion. Upon vacation of the said portion in occupation of J D Tytler School, the same will be kept locked and the possession of the said portion of the suit property will not be parted with to anybody else by Dr. R.S. Chauhan.

(j) That in view of the settlement arrived at among the parties, all the parties will apply together for the mutation of $1/6^{\text{th}}$ share of late Shri Shiv Dayal Singh in the records of Delhi Development Authority [for short 'DDA']. The beneficiaries of the share of late Shri Shiv Dayal Singh will bear the expenses for mutation of the suit property in proportion to their respective shares in the suit property.

(k) That 50% share of $1/9^{\text{th}}$ share of $1/6^{\text{th}}$ share of the suit property relinquished by Smt. Tara Mani Singh is to be reverted back to Smt. Tara Mani Singh and will be mutated in the records of DDA accordingly in the name of Smt. Tara Mani Singh.

(l) That 50% share of $1/9^{\text{th}}$ share of $1/6^{\text{th}}$ share of the suit property relinquished by Smt. Tara Mani Singh vide the Relinquishment Deed dated 29.12.1999 shall go to Dr. Chander Kanta Khan and will be mutated in her name in the records of DDA.

(m) That $1/6^{\text{th}}$ share of late Shri Shiv Dayal Singh will go to the persons in proportion to their respective shareholding in the suit property and will be mutated in the records of DDA as follows:-

(i) 5 and $\frac{1}{2}$ share of $1/9^{\text{th}}$ each of $1/6^{\text{th}}$ share of late Shri Shiv Dayal Singh to Dr. Chander Kanta Khan.

(ii) $\frac{1}{2}$ share of $1/9^{\text{th}}$ share of $1/6^{\text{th}}$ share of late Shri Shiv Dayal Singh to Smt. Tara Mani Singh.

(iii) 1 share of $1/9^{\text{th}}$ share of $1/6^{\text{th}}$ share of late Shri Shiv Dayal Singh to Dr. R.S. Chauhan.

(iv) 1 share of $1/9^{\text{th}}$ share of $1/6^{\text{th}}$ share of late Shri Shiv Dayal Singh to Cdr.(Retd.) N S Chauhan; and

(v) 1 share of 1/9th share of 1/6th share of late Shri Shiv Dayal Singh to Smt. Deepshree Singh.

(n) That if the portion in occupation of J D Tytler School is not vacated on or before 31.03.2014 then the parties with their mutual consent will extend the time of the sale of the suit property after 31.03.2014 and as soon as the portion in occupation of J D Tytler School is vacated, the parties will sell the suit property in the terms mentioned above.

The statements of plaintiff and defendant no.5 have been recorded separately vide Ex.A & Ex.B.

Consequently, the suit is disposed of in terms of settlement. The decree sheet will incorporate the terms of the settlement.

The date of 21st January, 2014 fixed before the learned Joint Registrar stands cancelled.”

ARGUMENTS ON BEHALF OF THE APPELLANT

4. Learned counsel for the appellant contended that the learned Single Judge while passing the impugned order had failed to consider that the appellant was not a party to the compromise on the basis of which the civil suit was decreed and thus the finding of the Court that *‘the parties have settled the matter on the following terms’* did not apply to the appellant. He further stated that the handwritten statements on the Index of the Compromise Application stating that *‘This is a joint application by all parties. They are duly served’* were false, as at no juncture, a copy of the said application had been served on the appellant and therefore, on this short score, the impugned judgment was liable to be set aside. He submitted that the learned Single Judge had failed to consider that an application for compromise under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 without the signatures/consent of all parties to the *lis* could not be allowed against all parties to the *lis* and be converted into a decree of the Court.

5. He also submitted that the impugned judgment had the ‘*surprising and shocking effect*’ of restricting the share of the appellant in the said property to 1/54th (i.e. 1/9th share of the alleged 1/6th share of Shri Shiv Dayal Singh), thereby effectively barring the rights of the appellant to claim anything qua the remaining 5/6th share of the property, despite having a legal interest in the same.

6. Learned counsel for the appellant stated that respondent no. 1 had averred in the suit that the concerned property was partitioned by late Shri Shiv Dayal Singh during his lifetime and five units of the same were given to each of his five sons. He further submitted that the learned Single Judge had failed to appreciate that it is settled law that a self-acquired property could not be partitioned during the lifetime of the owner. He contended that the Trial Court had failed to consider that the plaint was a collusive action filed by the respondents in order to lay a concocted claim whereby the plaintiff and his brothers allocated lion’s share of the said property to each other. In support of his submission, he relied upon the judgement of the Apex Court in ***Bhanu Kumar Jain Vs. Archana Kumar and Another, (2005) 1 SCC 787*** wherein it has been held that Section 96(2) of the Code of Civil Procedure (hereinafter referred to as ‘CPC’) entitles the appellant to plead that the suit itself is not maintainable and the material on record would not entitle the plaintiff to a decree in his favour.

ARGUMENTS ON BEHALF OF THE RESPONDENT NOS. 1,2,3,5,6,7& 8

7. *Per contra*, learned counsel for respondent nos. 1, 2, 3, 5, 6, 7 and 8 submitted that the appeal was ex-facie barred by limitation and the appellant

was not entitled to any exclusion under Section 14, or any condonation of delay under Section 5 of the Limitation Act, 1963.

8. She further submitted that the learned Additional District Judge and the learned Single Judge in CM(M) 541/2019 had held that the application filed by the appellant under Section 151 CPC was barred by limitation and was without any merit as it was an ex parte decree and not a consent decree. Since considerable emphasis was laid by learned counsel for respondents upon the orders passed by the learned Additional District Judge and learned Single Judge, relevant portion of the same are reproduced hereinbelow:-

A) Order dated 16th January, 2019 passed in CS No. 12031/2016 by learned Additional District Judge:-

“7 The main contention of the applicant is that the compromise decree dated 18.11.2013 does not bear her consent and on this ground the same needs to be set aside. It is noted that the order dated 18.11.2013 is separate order in IA no. 18213/2013 u/R. 3 of Order XXIII CPC r/w Section 151 CPC. There is separate order in continuation in CS (OS) 1996/2008. Both the orders are dated 18.11.2013. The settlement order was passed vide separate IA number. The defendant no. 2, 3, 4A, 4B, 6, 7 and 8 were proceeded ex-parte vide order dated 27.04.2011 which is so recorded in order in CS (OS) 1996/2008. The order in IA no. 18213/2013 is prior to the order in CS (OS) 1996/2008. Hence the settlement order is dictated prior to the next order. The settlement application was disposed prior to disposal of the suit vide separate order. While passing the separate order in CS (OS) 1996/2008 the settlement order was taken into consideration. It was given due consideration as the settlement had formed part of decree in the suit. Hence the order of settlement is separate then order of final disposal of the suit in which the due consideration was also given to the settlement order. Hence the final order is a separate order and not settlement order alone and therefore in the final order consent of the applicant was not required who was ex-parte vide order dated 27.04.2011. In

fact the final order in CS (OS) 1996/2008 was passed in which defendant no. 8 was ex-parte. Admittedly defendant no. 8 was having knowledge and notice of the present suit. Hence the decree dated 18.11.2013 against defendant no. 8 is ex-parte decree which also incorporates part of consent decree between the parties to the suit. There is no challenge to the service on applicant. Therefore in the ex-parte decree against the applicant/defendant no. 8 consent of the applicant is not required and therefore on this ground alone the present application is liable to be dismissed.

8. The present application is recorded as IA no. 4522/14 filed on 11.03.2014. The ex-parte decree which also contains consent decree is dated 18.11.2013. The applicant in fact seeks to set aside the ex-parte decree in the form of present application u/sec. 151 CPC. However there is separate provision for setting aside ex-parte decree u/R. 13 of Order IX CPC. There is prescribed period of limitation for setting aside ex-parte decree which is 30 days. Defendant had knowledge of the suit and therefore date of knowledge has to be imputed from the date of decree under Article 123 of Limitation Act, 1963. Therefore the present application cannot be entertained under Sec. 151 CPC when there is specific provision under R. 13 of Order IX CPC. The present application is time barred without any explanation for delay. On this ground also the present application is liable to be dismissed.

9. In view of the above discussion the application of applicant/defendant no. 8 is dismissed.”

B) Order dated 23rd January, 2021 passed in CM(M) 541/2019 by learned Single Judge:-

“8. At the outset, it has been put to the learned counsel for the petitioner that the remedy of the petitioner against a decree passed, though ex parte, is in form of an application seeking review of the same; or in form of an application under Order IX Rule 13 of the Code seeking to set aside an ex parte decree; or in form of an appeal under Section 96(2) of the Code. The learned counsel for the petitioner, however, submits that an application under Section 151 of the Code would also be maintainable to challenge the decree,

which though having been passed ex parte, adversely affects the rights of the petitioner as having been passed unlawfully on the basis of a compromise.

9. I do not agree with the submission made by the learned counsel for the petitioner. Law has given specific remedies to the petitioner if she is aggrieved of the decree passed by the Court. The petitioner cannot bypass such remedies and invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

10. Accordingly, the present petition is dismissed, leaving it open to the petitioner to avail the statutory remedy, if so advised, in accordance with the law.”

9. She contended that no prejudice had been caused to the appellant pursuant to the impugned order since the appellant's share in the property was unaffected by the impugned order and remained exactly the same as she was entitled to under the Family Settlement dated 23rd December, 1999 which was duly executed and signed by the appellant. The said Family Settlement is reproduced hereinbelow:-

“MEMORANDUM OF FAMILY SETTLEMENT

THIS FAMILY SETTLEMENT is made the 23 day of December in the year 1999 AMONG the following class I heirs of the late deceased Shri Shiv Dayal Singh s/o Shri Shiv Bux Singh:-

<i>Sr. No.</i>	<i>Name</i>	<i>Relationship with the Deceased</i>
1.	<i>Mrs. Manorama Devi</i>	<i>Widow of the Deceased</i>
2.	<i>Lt. Col. (Retd) Revti Raman</i>	<i>Son</i>
3.	<i>Mrs. Shiela Singh</i>	<i>Daughter</i>
4.	<i>Mrs. Tara Mani Singh</i>	<i>Daughter in Law</i>
5.	<i>Dr. R.S. Chauhan</i>	<i>Son</i>
6.	<i>Dr. Chander Kanta</i>	<i>Daughter</i>

7. Cdr. (Retd)
N.S. Chauhan Son
8. Shri J.J. Chauhan Son
9. Mrs. Deepshree Singh Daughter

WHEREAS the said Shiv Dayal Singh (hereinafter called the Deceased) Died on the 25 February 1992 in Sir Ganga Ram Hospital, New Delhi leaving his 1/6th portion of the property situated at 18 New Rohtak Road, Karol Bagh New Delhi-5 as detailed and descried in the schedule 'A' attached hereto.

AND WHEREAS the above mentioned parties claimed allege heirship to the Deceased as enumerated above.

AND WHEREAS Dr. R.S. Chauhan vehemently denies the claim of all the other heirs and it is evident that the said family property will be lost in the litigation which is imminent.

AND WHEREAS on the intervention of friends and well-wishers of the family, THIS SETTLEMENT is made for the benefit of the family generally and for the purpose of avoiding family disputes and litigation whereby the parties are irrevocably bound as below,

1. That the First Party, Smt. Manorama Devi relinquishes her 1/9th portion of the property in favour of Dr. Chandra Kanta the sixth party mentioned above.
2. That the second party namely Lt. Col. (Retd.) Revti Raman relinquishes his 1/9th share in the 1/6th portion of the property in favour of Dr. Chandra Kanta the Sixth party mentioned above.
3. That the third party namely Smt. Taramani Singh relinquishes her 1/9th share in the 1/6th portion of the property in favour of Dr. Chandra Kanta the sixth party mentioned above and Dr. R.S. Chauhan, the fifth party in two equal portions.
4. That the fourth party namely Smt. Shela Singh relinquishes her 1/9th share in the 1/6th portion of the property in favour of Dr. Chandra Kanta the sixth party mentioned above.

5. That the fifth party namely Dr. R.S. Chauhan retains and gets his 1/9th share in the 1/6th portion of the property.

6. That the sixth party namely Dr. Chandra Kanta retains and gets her 1/9th share in the 1/6th portion of the property. In addition she gets the portion relinquished by the first, second, third, fourth and eighth parties as detailed in this settlement.

7. That the seventh party namely Cdr. N.S. Chauhan retains and gets is 1/9th share in the 1/6th portion of the property.

8. That the Eighth party Shri J.S. Chauhan relinquishes his 1/9th share in the 1/6th portion of property in favor of Dr. Chandr Kanta the Sixth party mentioned above.

9. That the Ninth party Smt. Deepshree Singh retains and gets her 1/9th share in the 1/6th portion of the property.

That it is further hereby declared and agreed between the parties that this FAMILY SETTLEMENT ends all disputes between the parties relating to the respective rights and claims of the parties to the property of the Deceased and that each party for the purposes of this settlement admits the claim of the other.

That it is also hereby declared and agreed between the parties that the said portion shall also be mutated in accordance with the Family Settlement in the record of the DDA New Delhi expeditiously.

That it is also hereby declared and agree between the parties that the property at 18 New Rohtak Road shall be got converted into free hold property by the due date that is 15th January, 2000. Each party shall pay the dues to the DDA in accordance with and proportionate to her/his share in the property.

That it is also hereby declared and agreed between the parties that each patty shall proportionately pay the dues on account of property tax, arrears of lease to the DDA, Respective authority,

any other maintenance, scavenging tax etc. That it is also hereby declared and agreed between the parties that if in case there is a delay in getting the property converted into free hold property on account of non-compliance by any one party then that party alone shall be liable to make good the damages and shall solely bear the additional expenses, penalties, extra charges or expenditure imposed by the DDA or any other authority.

IN WITNESS whereof the said Mrs. Manoram Devi (First Party) Lt. Col. (Regd) Revati Raman (Second Party), Mrs. Sheila Singh (Third party), Mrs. Tara Mani Singh (Fourth Party), Dr. R.S. Chauhan (Fifth Party), Dr. Chander Kanta (Sixth party), Cdr (Retd) N.S. Chauhan (Seventh party), Shri J.S. Chauhan (Eighth party), Mrs. Deepshree Singh (Ninth party) have hereunto at 18, New Rohtak Road, New Delhi signed this deed the day and the year first above written.

Witness:

1. Sd/-
Sheila Singh Sd/- (Manorma Devi)
First Party _____
2. Sd/-
Revati Raman Sd/- (Revati Raman)
Second Party _____
Sd/- (Sheila Singh)
Third Party _____
Sd/- (Tara Mani Singh)
Fourth Party _____
Sd/- (blank)
Fifth Party _____
Sd/- (Chander Kanta)
Sixth Party _____
Sd/- (N.S. Chauhan)
Seventh Party _____

Sd/- (J.S. Chauhan)
Eighth Party _____

Sd/- (Deep Shree)
Ninth Party _____”
(emphasis supplied)

10. She further stated that the appellant had unduly prevented the conversion of the property situated at 18, New Rohtak Road, Delhi into freehold, despite expressly consenting to cooperate with the other shareholders with respect to the same, which delay had severely prejudiced and caused distress to all the other family members, all of whom were senior citizens.

REJOINDER ARGUMENTS ON BEHALF OF THE APPELLANT

11. In rejoinder, learned counsel for the appellant relied upon the judgement of the Supreme Court in ***Pusha Devi Bhagat Vs. Rajinder Singh and Others*, (2006) 5 SCC 566** and ***Dadu Dayal Mahasabha v. Sukhdev Arya & Anr. 1990 1 SCC 189*** wherein it has been held that the only remedy available to a party to avoid a consent decree is to approach the court which recorded the compromise and made a decree in terms of it and establish that there is no compromise. Consequently, according to him, appellant was entitled to exclusion of time spent by her in pursuing her remedies under Section 14 of the Limitation Act while calculating the period of limitation for filing the present appeal.

COURT'S REASONING

A CONSENT DECREE IS A CONTRACT WITH THE IMPRIMATUR OF THE COURTS SUPERADDED. 'LAWFUL COMPROMISE' MEANS THAT THE AGREEMENT OR COMPROMISE MUST NOT BE UNLAWFUL BY THE NATURE OF ITS TERMS OR ON THE FACE OF IT.

12. It is settled law that a consent decree is a contract with the imprimatur of the courts superadded. It is something more than a mere contract and has the elements of both command and contract. The meaning of the word 'lawful compromise' means that the agreement or compromise must not be unlawful by the nature of its terms or on the face of it. It would be unlawful if the consideration or the object of the agreement is forbidden by law, or is of such a nature that if permitted it would defeat the provision of any law, or is fraudulent or the court regards it as immoral or opposed to public policy as provided by Section 23 of Contract Act.

SINCE IN THE PRESENT CASE, THE APPELLANT HAD NEITHER FILED THE PRIOR PROCEEDING (NAMELY, THE APPLICATION DATED 06TH FEBRUARY, 2014 UNDER SECTION 151 CPC BEFORE THE COURT THAT HAD PASSED THE DECREE) WITHIN LIMITATION NOR WITH DUE DILIGENCE OR IN GOOD FAITH, IT IS NOT ENTITLED TO ANY EXCLUSION OF TIME

13. This Court finds that the present appeal has been preferred after a delay of over two thousand three hundred and thirty one (2331) days. It is an admitted position that the appellant had been served and had knowledge of the filing of the suit, but she voluntarily chose not to enter appearance. Since the appellant failed to appear, she was proceeded *ex-parte* vide order dated 27th April, 2011. Consequently, the limitation for filing the present appeal shall commence from the date of the impugned judgement and order

namely 18th November, 2013 and not from the date of alleged knowledge of the judgment and decree, as claimed by the appellant.

14. Further, the appellant is not entitled to benefit of Section 14 of the Limitation Act as even the prior proceeding initiated by the appellant, (namely, the application dated 06th February, 2014 under Section 151 CPC before the Court that had passed the decree) had not been filed within limitation and also the said prior proceeding had not failed due to defect of jurisdiction or other cause of like nature. It is settled law that when a specific remedy exists, the inherent powers of a Court cannot be invoked. In fact, as held by both the learned Additional District Judge and the learned Single Judge of this Court in CM (M) 541/2019 (which findings have attained finality) that the appellant's only remedy against the *ex parte* decree was to prefer an application under Order IX Rule 13, or under Section 114 of the CPC or an appeal and not under Section 151 CPC.

15. In our opinion, the reliance placed by the appellant on the decision in ***Pushpa Devi Bhagat v. Rajinder Singh & Ors.*** (Supra) is misplaced in view of the fact that the judgment does not state that an application under Section 151 of the CPC is maintainable for challenging either a consent decree or an *ex parte* decree. Similarly, the decision in ***Dadu Dayal Mahasabha v. Sukhdev Arya & Anr. (1990) 1 SCC 189*** is also distinguishable as no fraud had been played upon the Court. On the contrary, the impugned Judgment and Order expressly records that the appellant had been proceeded *ex-parte* and there is no challenge to the said order.

16. In ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Others, (2008) 7 SCC 169*** it has been held that

the following conditions have to be satisfied before Section 14 of Limitation Act can be pressed into service:-

“(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court.”

17. Since in the present case, the appellant had neither filed the prior proceeding (namely, the application dated 06th February, 2014 under Section 151 CPC before the Court that had passed the decree) within limitation nor with due diligence or in good faith or failed due to defect of jurisdiction, it is not entitled to any exclusion of time.

NO PREJUDICE HAS BEEN CAUSED TO THE APPELLANT BY THE IMPUGNED JUDGMENT AND DECREE DATED 18TH NOVEMBER, 2013 AS THE SAID DECREE RECOGNISES HER SHARE IN THE SUIT PROPERTY AS ACCEPTED BY HER IN THE FAMILY SETTLEMENT DATED 23RD DECEMBER, 1999, ESPECIALLY IN THE ABSENCE OF ANY CHALLENGE TO THE SAID FAMILY SETTLEMENT.

18. This Court is further of the view that no prejudice has been caused to the appellant by the impugned judgment and decree dated 18th November, 2013 as the said decree recognises her share in the suit property as accepted by her in the Family Settlement dated 23rd December, 1999.

19. This Court finds that the Family Settlement accepts and proceeds on the assumption that the deceased Sh. Shiv Dayal Singh had only 1/6th share in the suit property. Therefore, the appellant's submission that the impugned judgment and decree dated 18th November, 2013 effectively bars her right to claim anything qua the remaining 5/6th share of the property, despite having a legal interest in the same is contrary to facts and untenable in law, especially in the absence of any challenge to the Family Settlement dated 23rd December, 1999.

HAVING ELECTED NOT TO PARTICIPATE IN THE SUIT BEING CS(OS) No.1996/2008 AND/OR CHALLENGE THE ORDER DATED 27TH APRIL, 2011 PURSUANT TO WHICH THE APPELLANT WAS PROCEEDED EX-PARTE, IT IS NOT OPEN TO THE APPELLANT TO CONTEND TODAY THAT SHE WAS EITHER 'TAKEN BY SURPRISE' AT THE CONSENT DECREE LIMITING HER RIGHTS TO 1/6TH SHARE IN THE SUIT PROPERTY OR THAT THE DECREE BARRING HER RIGHT TO CLAIM ANYTHING QUA THE REMAINING 5/6TH SHARE OF THE PROPERTY DESPITE HAVING A LEGAL INTEREST IN THE SAME, WAS ILLEGAL.

20. Further, the submission of the counsel for the appellant that a self-acquired property could not be partitioned during the lifetime of the owner, in view of the Family Settlement dated 23rd December, 1999 duly executed and signed by the appellant is a mixed question of fact and law and it required the appellant to lead evidence. On the basis of a bald averment in the appeal, the suit filed by the respondent cannot be held to be ex-facie barred in law.

21. In fact, the suit for partition (CS 1996/2008) had been filed by the plaintiff/respondent No.1 primarily challenging the Family Settlement dated 23rd December, 1999 and for partition of only 1/6th share of the suit property

allegedly owned by late Shri Shiv Dayal Singh. There was no *lis* with respect to the other 5/6th portion of the suit property in the plaint as according to the plaintiff/respondent No.1 in the plaint, the 5/6th share of suit property had been partitioned between late Sh. Shiv Dayal Singh and his children in a case before the Court of Ms. Urmilla Rani, Civil Judge, Delhi. Though the compromise decree passed by the Court of Ms. Urmilla Rani, Civil Judge, dated 23rd August, 1984 in Suit No. 64/79 had not been filed, yet the said fact was not disputed/denied by the appellant in the suit.

22. It is pertinent to mention that in a suit for partition every party is a plaintiff and if the appellant was of the view that 5/6th share of the suit property should have been open for partition, she should have agitated her claim in the suit and sought appropriate relief in her pleadings. In fact, despite the plaintiff/ respondent making bold his claim in the plaint that 5/6th portion of the suit property had stood previously partitioned, the appellant chose not to challenge the said averment by filing any pleadings and/or leading any evidence. Consequently, having elected not to participate in the suit being CS(OS) No. 1996/2008 and/or challenge the order dated 27th April, 2011 pursuant to which the appellant was proceeded ex-parte, it is not open to the appellant to contend today that she was either '*taken by surprise*' at the consent decree limiting her rights to 1/6th share in the suit property or that the decree barring her right to claim anything qua the remaining 5/6th share of the property despite having a legal interest in the same, was illegal, especially when the suit was neither barred in law nor vitiated by fraud ex-facie.

23. This Court is of the view that the judgement of the Supreme Court in ***Bhanu Kumar Jain Vs. Archana Kumar and Another*** (supra) offers no

assistance to the appellant as it is not her case that the material on record was insufficient for passing a decree or that the Court that passed the decree lacked jurisdiction. This Court is further of the opinion that the only remedy for the appellant in the present case was to prefer an application under Order IX Rule 13, or under Section 114 of CPC. Not even a ‘*modicum of explanation*’ was offered during the hearing as to why the ex-parte order be recalled or set aside. In fact, during the hearing, learned counsel for the appellant had candidly admitted that appellant had not filed any application under Order IX Rule 13 CPC as it had no tenable ground to seek recall of the ex-parte order dated 27th April, 2011.

THE LEARNED ADDITIONAL DISTRICT JUDGE HAS GIVEN A CLEAR FINDING, WHICH ORDER HAS NOT BEEN CHALLENGED IN THE PRESENT PROCEEDINGS, THAT THE IMPUGNED JUDGMENT AND DECREE DATED 18TH NOVEMBER, 2013 IS AN EX-PARTE DECREE AGAINST THE APPELLANT, FOR WHICH NO CONSENT OF THE APPELLANT WAS REQUIRED.

24. The appellant’s submission that the application for compromise filed by some of the parties could not be converted into a decree of the Court against the parties who had not signed the compromise application is contrary to facts. The learned Additional District Judge vide order dated 16th January, 2019, which order has not been challenged in the present proceedings, has already held that the order allowing the settlement application is separate and distinct from the order disposing of the suit finally. In fact, the learned Additional District Judge has given a clear finding that the impugned judgment and decree dated 18th November, 2013 is an ex-parte decree against the appellant, for which no consent of the appellant was required.

THERE IS NO LAW WHICH STIPULATES THAT A COURT IS BOUND TO SERVE ANY COMPROMISE APPLICATION ON A PARTY WHO HAD WILLINGLY ALLOWED IT TO BE PROCEEDED EX-PARTE. TO ACCEPT THE SUBMISSION OF THE APPELLANT WOULD AMOUNT TO READING INTO THE STATUTE A DUTY UPON THE COURT TO 'RUN AFTER A LITIGANT' WHO HAD VOLUNTARILY TURNED TO ITS BACK TO THE LEGAL SYSTEM.

25. Also the submissions of learned counsel for the appellant that the consent decree was illegal as the appellant at no juncture was served with a copy of the compromise application is contrary to law as the contesting parties had been served and had signed the compromise application. There is no law which stipulates that a court is bound to serve any compromise application on a party who had willingly allowed it to be proceeded ex-parte. To accept the submission of the appellant would amount to reading into the Statute a duty upon the Court to 'run after a litigant' who had voluntarily turned to its back to the legal system – a duty which is not provided in any statute.

TO CONCLUDE, THE IMPUGNED JUDGMENT AND DECREE DATED 18TH NOVEMBER, 2013 GIVES THE APPELLANT 1/9TH SHARE IN THE 1/6TH PORTION OF THE SUIT PROPERTY IN ACCORDANCE WITH THE FAMILY SETTLEMENT DATED 23RD DECEMBER, 1999. FURTHER, TO NOW RECALL OR VARY THE DECREE AT THE INSTANCE OF THE APPELLANT WHO WAS NEGLIGENT IN DEFENDING HER RIGHTS WOULD AMOUNT TO PLACING PREMIUM ON 'CALLOUSNESS'. THIS COURT IS ALSO OF THE VIEW THAT ANY JUDICIAL SYSTEM WHICH DOES NOT PROVIDE FINALITY TO DISPUTES, CAN NEVER EARN THE TRUST, CONFIDENCE AND GOODWILL OF THE SOCIETY.

26. To conclude, the impugned judgment and decree dated 18th November, 2013 gives the appellant 1/9th share in the 1/6th portion of the suit

property in accordance with the Family Settlement dated 23rd December, 1999. A bare perusal of the Family Settlement reflects that the appellant had signed on each page of it and the same was based on mutual consent and agreement. In fact, the mutation was also carried out with respect to this 1/6th portion in accordance with the said Family Settlement. Further, to now recall or vary the decree at the instance of the appellant who was negligent in defending her rights would amount to placing premium on ‘*callousness*’ and would place the parties who diligently pursued the litigation at all stages at a serious disadvantage. This Court is also of the view that any judicial system which does not provide finality to disputes, can never earn the trust, confidence and goodwill of the society. Consequently, the present appeal is dismissed both as barred by limitation as well as on merits.

MANMOHAN, J

ASHA MENON, J

MAY 20, 2021

ka/rn/js