



2024:DHC:8792-DB



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

Date of decision: 13.11.2024

+ RFA(OS) 4/2020, CM APPL. 2113/2020-Delaly 1147 days in refiling.

ANANT VERINDER SINGH (DECEASED) THR LRAppellant
Through: Appellant in person

Versus

COL INDERJEET SINGH (DECEASED) THR LRRespondent
Through: Mr. Arjun Singh Bawa and Ms.
Aastha Agnihotri, Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Section 96 of the Civil Procedure Code, 1908 seeks to assail the judgment and decree dated 26.07.2016 passed by the learned Single Judge in CS (OS) 874/2002. Vide impugned judgment, the learned Single Judge, after considering the report submitted by the learned Local Commissioner appointed pursuant to the Preliminary Decree dated 13.07.2012, came to a conclusion that the suit property could not be divided by metes and bounds. Consequently, a final decree for partition of the suit property being D-57, Defence Colony, New Delhi-110024 has been passed by directing the sale of the property and distribution of the sale proceeds thereof, in favour of the parties as per their respective shares in accordance with the Preliminary Decree.



2. The learned Single Judge has further granted liberty to both parties to participate in the sale by submitting their respective bids for purchase of the suit property. Vide the impugned judgment, the parties have been restrained from inducting any third party in the possession of the property or from doing any such act as may be an impediment in the sale thereof.

3. We may note that the present appeal has been filed alongwith an application seeking condonation of 1147 days delay in re-filing of the appeal. The appellant, who is appearing in person, submits that the delay in re-filing of the appeal was *bona fide* as he was first pursuing his challenge to the Preliminary Decree before the Apex Court after his appeal against the same was rejected by the Division Bench. Upon the said Special Leave Petition being dismissed by the Apex Court, he claims to have raised objections in accordance with Section 47 of the Civil Procedure Code, 1908 to the execution of the impugned decree a also the Preliminary Decree for partition in the execution proceedings initiated by the respondent/ plaintiff.

4. He further submits that after the objections raised by him were rejected by the Executing Committee on 05.04.2019, he had preferred a revision petition, which was also rejected on 13.09.2019 and it is only thereafter that the objections raised by the Registry were removed and consequently, the appeal came to be listed before this Court for the first time on 20.01.2020. He, therefore, contends that in the light of these steps which he was taking, it is evident that he was acting with diligence and, therefore, prays that the delay in re-filing of the appeal be condoned.

5. Further, in support of his challenge to the impugned judgment and decree dated 26.07.2016 on merits, he submits that as the Preliminary Decree dated 13.07.2012 in itself was contrary to the family settlement



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arrived at between the parties on 09.04.2001, the learned Single Judge ought not to have hastily passed a decree of final partition only on the basis of this Preliminary Decree and that too without examining his grievance regarding the Preliminary Decree being contrary to the family settlement which, he submits, continues to be binding on both the parties.

6. Furthermore, he contends that the Division Bench while dismissing his appeal to the Preliminary Decree dated 13.07.2012 being RFA(OS) 87/2012 had observed that the question regarding the rights of the parties under the deed of family settlement would still require to be adjudicated and therefore, it was incumbent upon the learned Single Judge to consider the effect of the settlement dated 09.04.2001 before passing the Final Decree for partition.

7. On the other hand, Mr. Arjun Singh Bawa, learned for the respondent opposes not only the application seeking condonation of delay in re-filing the appeal, but also the appeal itself. He submits that the appellant having unsuccessfully challenged the Preliminary Decree both before the Division Bench as also the Apex Court, he cannot now be permitted to urge that the question as to that rights/ shares of the parties under the family settlement ought to be re-determined by ignoring the Preliminary Decree. Further, by drawing our attention to the order dated 24.02.2014 passed by the Division Bench in RFA (OS) 87/2012 filed at the instance of the appellant, he submits that the Division Bench while rejecting his challenge to the Preliminary Decree dated 13.07.2012 with costs of Rs.50,000/- had specifically observed that even the family settlement between the parties had recorded that both parties would have equal shares in the suit property.

8. He further, contends that the appellant has been indulging in forum



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hunting and has made every endeavour to assail the decree of preliminary partition dated 13.07.2012 in every possible forum but having failed to do so, is now, without any basis, trying to urge that the learned Single Judge while passing the Final Decree of partition ought to have again examined his plea regarding the shares of the parties as per the family settlement. He, therefore, prays that the application as also the appeal be dismissed with heavy costs.

9. Having considered the submissions of the learned counsel for the parties and perused the records including the impugned judgment, we find that the reasons furnished by the appellant in his application for seeking condonation of delay in re-filing the appeal do not inspire confidence at all. There was absolutely no justification for the appellant to have simply filed an appeal before this Court and waited to explore all other avenues for about 3 ½ years wherein he admittedly failed and then take steps to prosecute his appeal. We have, however, at the insistence of the appellant, still proceeded to peruse the impugned judgment but are unable to find any infirmity whatsoever in the same.

10. As noted hereinabove, the only plea of the appellant before us is that despite his challenge to the Preliminary Decree dated 13.07.2012 having failed wherein it was categorically held that both parties i.e. the appellant and the respondent had equal shares in the suit property, he is still entitled to urge that the shares of both parties are not equal in the suit property, as per the Settlement Agreement dated 09.04.2001.

11. We are, however, unable to agree with the appellant as we are of the view that once Preliminary Decree determining the shares of the parties and categorically declaring that both the parties would have equal shares in the



suit property has attained finality, all that the learned Single Judge was required to do while passing the Final Decree was to determine as to whether the suit property could be divided by metes and bounds as per the shares determined in the Preliminary Decree for partition. In the event the property was found to be indivisible by metes and bounds, the Court was then required to direct sale thereof and division of the sale proceeds amongst the parties as per their respective shares determined under the Preliminary Decree.

12. In the present case, after the appellant's challenge to the Preliminary Decree had attained finality, the learned Single Judge by taking into account the report of the Local Commissioner came to a conclusion that the suit property could not be divided by metes and bounds. Consequently, the learned Single Judge while passing the final decree for partition had issued directions for sale of the suit property, by granting both parties liberty to participate in the sale thereof by way of appropriate bids. It may, therefore, be apposite to note hereinbelow the relevant findings as also the directions issued by the learned Single Judge under the impugned order:-

"1. As per the preliminary decree dated 13th July, 2012 in this suit for partition of property No.D-57, Defence Colony, New Delhi, the plaintiff has half undivided share and the two defendants together have the other half share in the said property.

2. Though a Commissioner was appointed to explore the possibility of partition of the property by metes and bounds but the order dated 16th December, 2014 records that the property is incapable of partition by metes and bounds and is to be auctioned with the parties being entitled to bid therefor.

9. It is further directed:-

(i) That all the parties would be entitled to participate in the sale and



to bid for the property.

(ii) The counsel for the plaintiff and the defendant no.1 in person state that besides the plaintiff and the defendant no.1 none else is in possession of any part of the property. The parties are restrained from inducting any third person into possession of the property or from doing any other thing which may be an impediment to the sale.

(iii) It will be open to the parties to jointly apply for mutation of the property from the name of their common predecessor to their name and to apply for conversion of leasehold rights in the land underneath the property into freehold and to have the Conveyance Deed of the freehold rights in land executed in their name, with the charges therefore being borne by the parties in accordance with their share in the property as per the preliminary decree.

(iv) The parties will be bound to deliver vacant peaceful physical possession of the portions of the property in their respective possession to the purchaser in terms of the sale/auction terms.

(v) If the parties are unable to themselves sell the property, either party shall be entitled to apply for execution.

(vi) It will be open to the plaintiff to, in the execution, apply for appointment of the same Local Commissioner as appointed vide order dated 6th November, 2015 for selling the property in execution."

13. From the aforesaid, it is evident that the learned Single Judge had issued directions for sale of the property and distribution of the sale proceeds thereof to the parties as per the respective shares determined under the preliminary decree. The appellant has, however, sought to urge that while passing a Final Decree of partition, the Court is not bound by the Preliminary Decree of partition, wherein the respective shares of the parties were determined. We find absolutely no merit in this plea as once the Preliminary Decree of partition had attained finality, the Court was bound to direct division of the suit property by metes and bounds or sale thereof as the case may be only on the basis of the shares determined under the Preliminary Decree.

14. We may note that the appellant has also urged that the Division Bench



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in RFA (OS) 87/2012, while dismissing his appeal had opined that the shares of the parties were required to be re-determined as per the Settlement Agreement dated 09.08.2001. Having carefully perused the said decision, we are unable to find any such direction to the learned Single Judge to re-determine the shares of the parties. We, therefore, find no merit in this plea of the appellant as well.

15. For the aforesaid reasons, we find absolutely no merit in the present appeal, which is, alongwith the pending application, dismissed with costs of Rs.1,00,000/- payable to the respondent.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 13, 2024/So