



2024:DHC:3455-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:01.05.2024

+ **EFA(OS) 3/2023 & CM APPL. 18259/2023**

MR BISWAJEET SINGH AND ORS.

..... Appellants

versus

**MR BIKRAMJIT SINGH (SINCE DECEASED
THR LRS)**

.....Respondent

Advocates who appeared in this case:

For the Appellants

:Mr. Arvind Nigam, Sr. Adv. with Mr.
Mayank Bhargava, Adv.

For the Respondent

: Mr. Nikhil Mehra, Adv. for R-1A (through
video conferencing)
Mr. Kirtiman Singh, Mr. Varun Pratap Singh
and Mr. Varun Rajawat, Adv. for R-1B.
Mr. Aabhas Kshetarpal, Ms. Aditi Laxman
and Mr. Neelaabh Bist, Adv. for R-1C.

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HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The present intra-court appeal has been filed by the appellants under Order XXI and Order XLI of the Code of Civil Procedure, 1908 (hereafter '*the CPC*'), impugning the judgment dated 15.02.2023

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(hereafter '*the impugned judgment*') passed by the learned Single Judge of this Court in EX. P no. 118 of 2019 captioned ***Bishwajeet Singh & Ors. v. Bikramjit Singh through LRs. & Ors.*** The appellants further seek the execution of the decree dated 01.10.2007 (hereafter '*the decree*') in terms of the order dated 05.11.2019 passed by the Division Bench of this Court.

Factual Context

2. The present dispute dates back to the year 1988. In that year, Mr. Bishwajeet Singh (hereafter '*appellant no.1*'), had filed a suit being CS(OS) no. 3235 of 1988 captioned ***Shri Bishwajeet Singh v. Shri Bikramjit Singh (Through LRs) & Ors.***, against Mr. Bikramjit Singh (deceased) (hereafter '*respondent no.1*'), Mr. Inderjeet Singh (deceased) (defendant no.2 in the suit) and Mrs. Vijaya Kumar (deceased) (defendant no.3 in the suit) seeking partition of Property No. 54, Friends Colony, East, New Delhi measuring 3860 sq.yds (hereafter '*the subject property*').

3. Mr. Inderjeet Singh (deceased) was later represented by his wife Mrs. Madhuri Singh (deceased) who also passed away on 16.06.2018. Mrs. Vijaya Kumar (deceased) is being represented by appellant nos.2 and no.3 who are her husband and son respectively in the present appeal.

NAME/ PARTY IN APPEAL (EFA)	PARTY IN EXECUTION	PARTY IN SUIT	SHARE
Appellant No. 1/	Decree Holder No. 1	Plaintiff	31.218%



Mr. Bishwajeet Singh			
Appellant No. 2 & 3/ LRs of the Late Mrs. Vijaya Kumari	Decree Holders No. 2 and 3	Late Mrs. Vijay Kumari was Defendant No. 3	18.782%
TOTAL SHARE OF APPELLANTS			50%
Respondent No. 1A, 1B, 1C (one unit) LRs of the Late Mr. Bikramjit Singh	Judgment Debtors 2 to 4 (one unit) as LRs of Judgment Debtor 1	Late Mr. Bikramjit Singh was Defendant No. 1	25%
Not a party/ Share of Late Mrs. Madhuri Singh, LR of Late Mr. Inderjit Singh	Not a party	Late Mr. Inderjit Singh was Defendant No. 2	25%
TOTAL SHARE OF PARTIES			100%

4. On 09.12.1997, the learned Single Judge of this Court passed a preliminary decree (hereafter '*the Preliminary Decree*'), directing the division of the subject property into four equal shares to be jointly owned by the parties. The said decree was appealed by the respondent's predecessor, however, the said challenge failed and by an order dated 12.08.2002 the appeal was dismissed as withdrawn.

5. By an order dated 08.09.1999, a Local Commissioner (LC) was appointed in the matter to assist the parties in dividing the subject property into four equal shares by metes and bounds since the single unit superstructure could not be divided into four living units. LC filed a report dated 15.12.1999 stating the infeasibility of dividing the subject



property by metes and bounds among the parties into four equal parts. On 08.12.1999, the respondent's predecessor filed a written submission in respect of the LC report submitted after the visit to the subject property. It was contended that taking into account the size of the subject property, there could be a physical division of the subject property into four shares. The learned Single Judge *vide* its order dated 19.10.2000 did not accept the objections raised by the predecessor of the respondent and further in pursuance of the LC report, directed the sale of the subject property by public auction, in the event that the property is not partitioned by the procedure in the Partnership Act, 1932 (hereafter '*the Partnership Act*') and also directed the parties to submit bids in sealed covers. The said order dated 19.10.2000 was challenged by respondent no.1 in RFA(OS) 1 of 1999, which was thereafter dismissed by an order dated 23.01.2001.

6. It is submitted on behalf of the appellants that the learned Single Judge by an order dated 25.01.2001, further directed the parties to consider a sale of the subject property by way of a public auction. The challenge to the said order was rejected by the Division Bench of this Court by an order dated 27.03.2001. It was held that the final decree determining the shares of the parties shall remain stayed till the disposal of the appeal by the Division Bench, while the process for disposing of the subject property shall continue as the sale of the property by way of public auction had no relevance with the passing of the final decree.

7. Mrs. Madhuri Singh had relinquished her [Mr. Inderjeet Singh



(deceased)] share in the subject property *vide* a relinquishment deed dated 28.11.1988 (hereafter '**the Relinquishment Deed**'). A civil suit being CS (OS) No. 309/1994 was also filed by Mrs. Madhuri Singh declaring that the Relinquishment Deed was null and void.

8. By an order dated 19.02.2003, the Preliminary Decree was modified on the basis of the Relinquishment Deed, and Mr. Bikramjit Singh, was allotted 50% share in the subject property.

9. This Court, by an order dated 28.10.2003, in CS(OS) 3235/1988 in pursuance of dealing with the delay in the sale of the subject property and no finality being attained in the matter, directed the parties to suggest if the "*property could be partitioned, or a final decree be passed or whether some local commissioner is to be appointed for suggesting the lots for the parties as per their shares.*"

10. On 19.03.2005, respondent no.1 passed away leaving behind his wife, two adult daughters and one adult son, who were now equal shareholders of his share in the subject property. His wife was thereafter impleaded in the suit as Defendant No. 1A and she also passed away shortly thereafter. Eventually, the respondents herein came to represent the estate of Defendant No. 1 that is, Mr. Bikramjit Singh (deceased), in the suit, as one unit.

11. On 28.04.2006 and 27.07.2006 both the parties filed their respective plans to partition the subject property and it was made clear to the parties that if there was no mutual agreement in respect of the partition plans, the Court would engage some architect or LC and divide



the subject property and the parties would be bound by such division. The parties once again could not come to an “*amicable division*”. Thus, by an order dated 20.02.2007, the learned Single Judge in CS (OS) No. 3235/1988 directed the parties to explore the possibility of selling the subject property, failing which the subject property would be thereafter sold by way of public auction.

12. By an order dated 01.10.2007 in CS (OS) No. 3235/1988, this Court passed a final decree directing the subject property to be sold by way of a public auction, and a court auctioneer was thereafter appointed. The court auctioneer reported that the public auction process had failed as no bidder had come forward for purchasing the subject property, hence, *vide* an order dated 25.03.2008, the parties were directed to jointly seek buyers. Thereafter, there were multiple rounds of unsuccessful public auctions held in an attempt to sell the subject property. This Court, in an attempt to aid the sale of the subject property also directed that the reserve price and deposit amount be reduced to attract more buyers on multiple occasions.

13. Mrs. Madhuri Singh (deceased), filed an application, IA No. 4552/2008 in CS (OS) No. 3235/1988 challenging the order dated 19.02.2003 *inter alia*, on the grounds that fraud had been played against her, which led to her relinquishing her share in the subject property. The learned Single Judge of this Court by an order dated 31.05.2010 dismissed her application. Mrs. Singh filed FAO(OS) no. 514 of 2010, seeking a restoration of her 25% share in the subject property, further



challenging the final decree passed on 01.10.2007.

14. On 11.08.2010, the Division Bench of this Court in FAO (OS) 514/2010 stayed the suit proceedings [CS (OS) No. 3235/1988] before the learned Single Judge and directed that the respondents be restrained from changing *status quo* with regard to the possession of the suit property and from entering any contract for sale of the suit property.

15. The Division Bench of this Court did not find it apposite to deliberate the dispute between respondent no.1 and Mrs. Madhuri Singh and further by an order dated 07.07.2014, referred the matter to the Mediation and Conciliation Centre. By an order dated 09.03.2015, it was reported that the aforementioned attempt at mediation failed.

16. During the pendency of the proceedings, Mrs. Vijaya Kumari (respondent no.3 in FAO (OS) 514/2010) passed away on 26.10.2015, survived by her husband Mr. Bhavani Pratap Singh (appellant no.2), and her son Mr. Sumer B. Singh (appellant no.3).

17. On 21.04.2017 this Court disposed of the application filed by late Mrs. Madhuri Singh seeking stay and directed the enforcement of the Decree and further held that an amount to the extent of Mrs. Madhuri Singh (deceased)'s share of 25% shall be secured in the execution proceedings in enforcement of the Decree. This Court also clarified that 25% of the sale proceeds would be secured only out of the respondents' 50% share, thus, resulting in the disbursement of 25% to the respondent and 50% to the appellants, and the court would secure Mrs. Madhuri Singh's 25% and disburse the same in accordance of the result of the



FAO filed.

18. By an order dated 09.11.2017, the Division Bench of this Court further clarified that 25% of the sale proceeds would be secured only out of respondent's 50% share (and not the entire sale proceeds), which will be disbursed amongst them equally and that the remaining 25%, initially belonging to Inderjeet Singh (deceased) would be retained in the Hon'ble Court pending the outcome of the appeal.

19. Thereafter, appellant no.1 filed an application (CM No. 3899 of 2018) seeking a modification of the order dated 21.04.2017, to the extent of annulment of direction for re-execution of the Decree, and seeking immediate exclusive possession of 50% of the subject property.

20. On 06.03.2019, a proposal was shared by respondent no. 1B, proposing to physically partition the property into two halves by dividing the Floor Area Ratio (hereafter '**FAR**') and selling one half, as one BDR Buildtech Pvt. Ltd. had offered to purchase 50% of the subject property for a sum of ₹ 70 Crores. Mrs. Madhuri Singh passed away on 16.06.2018, thus after her death there were multiple claims filed by different parties *vide* separate applications under Order XXII Rule 4 of the CPC for the substitution of Mrs. Madhuri Singh (deceased).

21. The Division Bench of this Court in FAO (OS) 514/2010 opined that the correct way forward keeping in mind the multiple claimants for substitution would be on the strength of the Wills. On 05.11.2019, the Court modified the order dated 21.04.2017. Pursuant to the order dated 05.11.2019, the appellants filed an execution petition (being Ex. Pet No.



118 of 2019 captioned ***Bishwajeet Singh & ors. V. Bikramjit Singh Through LRs & Ors.***) praying for immediate exclusive possession of 50% of the subject property and partition of the subject property by metes and bounds basis.

22. Respondents (*vide* respondent 1B) filed a review petition (being Rev. Pet No. 24 of 2020) praying that paras 6 to 11 of the order dated 05.11.2019 be restored to the FAO (OS) 514/2010. The Division Bench of this Court by an order dated 24.01.2020, while keeping the said FAO alive amended para 11 of the order dated 05.11.2019 and recorded that the parties consent to the division of the subject property by metes and bounds and the same shall continue.

23. On 15.02.2023, the learned Single Judge passed the impugned judgment and held that the decree dated 01.10.2007 is final and executable. This led to filing of the present appeal.

24. The appellants herein, filed an application under Order XXII Rule 3 of the CPC (CM APPL.-51922/2023), before this Court on 09.10.2023, impleading appellant no.3 in place of appellant no.2 in EFA (OS) 3/2023, on the ground that appellant no.2 (Mr. Bhawani Pratap Singh), the husband of Mrs. Vijaya Kumari [defendant no.3 in the suit and arrayed as respondent no.3 in FAO (OS) 514/2010], passed away recently on 08.09.2023 and is survived by his only son, Mr. Sumer B. Singh (appellant no.2) who is already a party in the present appeal.

Impugned Order



25. The learned Single Judge contended that a view cannot be taken favouring appellant no.1 on the sentiments of his aging because in disputes pertaining to the partition of properties, the plaintiff is not wholly a *dominus litius* and a 'judgement debtor' to a decree arising therefrom is not necessarily the party against whom an unfavourable decision is rendered.

26. The learned Single Judge stated that the execution petition stemmed from the Final Decree dated 01.10.2007. The learned Single Judge observed that a preliminary decree passed under Order XXI Rule 18(2) of the CPC determines shares of the parties, ownership rights and their entitlement which establishes the basis for final decree. In the event, a division by metes and bounds is not feasible, an LC is appointed to determine the means and manner of division and final decision is taken. According to the learned Single Judge, the Final Decree conclusively determines the rights of the parties with regard to all or any of the matters in controversy.

27. The learned Single Judge relied on Section 51 of the CPC, which reads as under:

“Subject to just conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree”

According to the learned Single Judge, this indicates that the court has the power to enforce a decree and that the same is restricted by the conditions prescribed in the decree itself, while Section 47 of the CPC, requires the executing court to determine all questions between the



parties in relation to execution, discharge, or satisfaction of the decree and that the court should limit itself to the circumstances of the case and ensure that the decree is enforced efficiently.

28. The learned Single Judge relied on the judgment passed by the Hon'ble Supreme Court in the case of ***Brackewel Automotive Components (India) Private Limited v. P.R Selvam Alagappan: (2017) 5 SCC 371*** and on the strength of the said decision held that as per Section 47 of the CPC, the executing court cannot travel beyond the decree. It can neither sit in appeal nor pass an order that jeopardizes the rights of the parties. In light of the same, the learned Single Judge reiterated that the appellant's argument that they had not received any benefit from the decree, was not merited as the Decree was passed after hearing the parties over a period of several years and therefore, the said decree cannot be interfered with by the Court. Hence, according to the learned Single Judge, the exercise that was done in the suit proceedings prior to the passing of the Decree, cannot be repeated in the execution proceedings. It is not upon the executing court to look into such concluded matters when determining the partition of the suit property as that would amount to modification of the final decree (the Decree dated 01.10.2007) and is beyond the executing court's power under Section 47 of the CPC.

29. The learned Single Judge relied on the orders passed by this Court from 09.12.1997 till date and held that after repeated failures to divide the subject property by metes and bounds, the parties had



consented to a decree for the sale of the said subject property by way of a public auction. He further affirmed that according to the orders dated 23.10.2007 and 12.02.2009 in CS (OS) 3235/1988, the learned Single Judge of this Court had directed that a proclamation of sale be issued, as the parties had claimed that stamp duty would be deducted out of the sale proceeds to be realized from the sale of the subject property, indicating that the consent of both the parties was taken for the process of sale and partition of the said subject property.

30. The learned Single Judge relied on the order dated 27.08.2007, whereby the Division Bench of this Court in FAO(OS) 305/2007 had held that the appellants therein could not be allowed to retract from selling the property by public auction as it had already agreed to the same in the order dated 25.03.2008.

31. Further, the learned Single Judge relied on the order of the Division Bench of this Court dated 11.08.2010 in FAO (OS) 514/2010, whereby the respondents therein (the respondents in the present appeal and JDs 1-4 in the impugned order) were restrained “*from changing status quo with regard to possession and from entering into any contract for sale of property*” and the said suit proceedings were stayed before the Single Bench, which was further disposed off by the order dated 05.11.2019, by the Division Bench of this Court in FAO (OS) 514/2010.

32. The order dated 05.11.2019 allowed the parties to explore all possibilities for the sale of the subject property and paved the way for an expedited resolution to a protracted legal battle. The order clarified



that the order dated 21.04.2017 should not be interpreted as limiting the executing court to only conducting a public auction for the sale of the subject property. It emphasised that the executing court has the flexibility to explore “all possibilities” for executing the decree, which may include other methods of selling the subject property.

33. The learned Single Judge held that attempting to partition the subject property after the Decree had been granted would mean revising or reversing the decree, which cannot be accepted, and such an action would go beyond mere execution and enter the realm of modifying the decree’s fundamental terms.

34. The learned Single Judge did not accept the appellant’s contention that the said subject property should be divided according to FAR. He relied on the Terms and Conditions (iv) of Chapter 4.0 of the Development Controls, activities Permitted, Planning Norms and Standards of the Master Plan for Delhi-2021(MPD 2021) and held that sub-division of the subject property will go beyond the provisions of the MPD 2021, as there are multiple parties seeking ownership of the subject property.

Submissions on behalf of the Appellants

35. Mr. Arvind Nigam, learned senior counsel appearing for the appellants, assailed the impugned order on the ground that the failure of the parties to divide the subject property in accordance with the Decree made the decree unworkable. He submitted that as per the order dated 21.04.2017 passed by the Division Bench of this Court in FAO (OS)



514/2010, it can be understood that the executing court can explore all possibilities other than the auction of the subject property.

36. It is submitted on behalf of the appellants that the Doctrine of Merger would apply to the facts of the present case as all the decrees and orders passed in the suit proceedings merged with the orders in FAO (OS) 514/2010 when by the order dated 21.04.2017, the Division Bench of this Court disposed of the said suit. Thus, by way of the Doctrine of Merger, orders dated 07.07.2014, 26.03.2019 and 26.11.2015, would be subsumed in the order dated 05.11.2019, permitting physical partition of the subject property.

37. Mr. Nigam also claimed that on reading Section 51 of the CPC with Order XXI Rule 28 of the CPC and Order XLI Rule 33 of the CPC, it is apparent that an appellate court can pass an order by which either the final decree can be modified, confirmed or reversed while the order of the appellate court will be treated as an order passed in the suit itself and shall also be binding on the executing court.

38. It is further submitted that by way of the impugned order, the learned Single Judge did not give effect to the order dated 05.11.2019 and restricted the manner in which the subject property could be divided. Additionally, it was also submitted by the learned senior counsel for the appellants that the LC report dated 15.12.1999 is anachronous and has become infructuous with the passage of time.

39. Next, Mr. Nigam submitted that the learned Single Judge did not recognise that the respondents were entitled to only 25% share in the



subject property under the Modified Decree which is below the 50% threshold of one moiety prescribed under Section 2 of the Partnership Act and that the appellants should also be entitled to the 50% irrespective of Mrs. Madhuri Singh's claim.

40. With respect to the division of the subject property, it is submitted on behalf of the appellants that ground coverage of 50% and FAR 200 will be allowed in two partitioned portions of 1,930 sq.yds. in the aggregate, and the FAR and ground coverage can be equally divided.

41. The learned Senior Counsel relied on the case of ***Kanwal Sibal v. New Delhi Municipal Council & Ors.: 2015 SCC OnLine Del 9779*** and on the strength of the said decision submitted that partition of the subject property by way of demarcation of the respective shares by the owners is legitimate, and the same amounts to distinct and independent ownership and that para 4.4.3 of the MPD 2021 does not relate to the multiple ownership rights as it prohibits sub-division of plots in accordance with the building control norms. Mr. Nigam claims that in the case of ***Sharda Nath v. Delhi Administration: Civil Appeal No. 1161 of 20098*** dated 17.10.2019 and in ***M.G Ramachandran & Anr. v. MCD & Ors.: 2013 SCC OnLine Del 2224*** the concerned courts had accepted that FAR can be used to equally divide the property.

Submissions on behalf of the respondents:



42. The learned counsel for the respondents opposed any deviation from the final decree, emphasizing that it explicitly calls for the sale of the property, not partition by metes and bounds. They argued that the order dated 05.11.2019 passed by the Division Bench in FAO (OS) 514/2010 did not authorize partition and only allowed for exploring different methods of sale.

43. They highlighted the past failed attempts to partition the subject property, noting that these efforts conclusively demonstrated the challenges and disagreements that made partition untenable.

44. They contested the appellants' interpretation of orders dated 21.04.2017 and 05.11.2019 and submitted that the said orders were intended to facilitate the execution of the existing decree and did not confer any authority to amend or reinterpret the decree to allow for partition.

45. They submitted that under the provisions of Section 47 of the CPC, an executing court is bound by the decree as passed and cannot alter it under the guise of execution.

46. Lastly, they appealed to the principles of equity and fairness, arguing that the equitable distribution of the sale proceeds as determined by the decree would serve the interests of all parties better than a partition, which could result in unequal and potentially unfair allocations of the property segments.



Analysis:

47. The principal question to be examined is whether the learned Single Judge has erroneously upheld the partition of the subject property by way of public auction and holding that the Decree is the final and executable decree.

48. As noted by the learned Single Judge, it is undoubtedly disconcerting that the parties are engaged in a drawn-out and complex legal battle that started with the filing of the partition suit CS(OS) 3235/1988, and is still going on.

49. The learned Single Judge of this Court by an order dated 09.12.1997 in CS(OS) 3235/1988 passed the Preliminary Decree for the division of the subject property and determined the share of the parties. By an order dated 08.09.1999, LC was appointed for the division of the subject property by metes and bounds. The LC in his report stated that the subject property is incapable of division by metes and bounds. By an order dated 20.02.2007, the Court recorded the agreement of the parties that the subject property cannot be amicably divided by metes and bounds and that it must be sold. In furtherance of the said agreement, the Court passed a final decree dated 01.10.2007, wherein the subject property was decreed to be sold by public auction.

50. It is pertinent to note that the plea of physical partition was rejected by the Division Bench of this Court in FAO (OS) 305/2007 by an order dated 27.08.2007 wherein it was held that since the parties gave



consent for the sale of the subject property by public auction, the appellants cannot be allowed to resile from the consent for sale by public auction.

51. The decree, in view of this Court, was clear and unequivocal in its terms wherein it was held that *“a final decree is thus passed in respect of the suit property declaring the share of the parties as aforesaid as also the agreement to put the property to public auction by sale to implement the division of the property.”* Therefore, the learned Single Judge rightly noted that the final consent decree dated 01.10.2007 was not modified by the order of the Division Bench of this Court dated 05.11.2019.

52. The order dated 05.11.2019 cannot in any manner be construed so as to prejudice the rights of any other beneficiaries.

53. The argument of the appellants that the respondents have acquiesced to the alleged modification of the decree is unsustainable. It is apparent that the Decree was never challenged before the learned Division Bench of this Court in FAO (OS) 514/2010 in which an order dated 05.11.2019 was passed. It also cannot be ignored that the same could also not have been challenged in view of the express bar under Section 96(3) of the CPC. FAO (OS) 514/2010 was filed in order to seek restoration of 25% share of late Mrs. Madhuri Singh's in the subject property, thus, in substance challenging shareholdings prescribed in Decree dated, 01.10.2007. Therefore, interference of this Court in determining the feasibility of any other mode of partition is unwarranted



when the final decree for sale has been passed after much deliberation and unsuccessful efforts to divide the subject property by metes and bounds, across several rounds of discussions amongst the parties.

54. It has also been fairly recorded in the proceedings that apart from the two attempts made to sell the subject property through public auction in the orders dated 18.12.2007 and 15.12.2008, no further attempts were made by the parties to execute the Decree.

55. The learned Single Judge has comprehensively discussed the effect of the order dated 05.11.2019 and after noting the efforts and stance of parties held that the said order only leads to one conclusion that is, the final decree before the Court is for sale of the subject property.

56. The learned Division Bench by way of the order dated 05.11.2019 has only clarified that the appellants cannot be entitled to set the clock back and start a trial *de novo*. It is clarified that the court cannot embark on a fresh examination of whether the subject property is capable of being partitioned by metes and bounds, as this would contradict the Decree terms. The learned Single Judge determined whether any modification to the original decree was implied or instructed. After thorough analysis, it was rightly concluded that the order dated 05.11.2019 did not alter the decree's fundamental requirement that the property be sold rather than partitioned. The directions issued in terms of the order dated 05.11.2019, during execution proceedings, were intended to allow flexibility in the method



of sale (private sale or *inter-se* bidding); not to revisit the decision against partitioning.

57. The issue of division by FAR is also significant in the present case. The learned counsel for the appellants argued that changes in municipal regulations and developments in urban planning, particularly those related to FAR, supported their position that partitioning the subject property by metes and bounds could now be considered both feasible and beneficial. On the contrary, the learned counsel for the respondents pointed out that introducing the concept of FAR as a basis for partition at the execution stage was not supported by the decree and represented an attempt to alter the decree's terms. There was a concern that partitioning the subject property according to FAR could lead to unequal value divisions, especially if different sections of the subject property have different development potentials or constraints. This could result in new grievances and protracted litigation among the parties, contrary to the decree's objective of conclusively partitioning the subject property through sale.

58. The learned Single Judge supported the respondents' view. It noted that the decree specifically mandated the sale of the subject property and any interpretation suggesting a partition by FAR would essentially amount to a modification of the decree. The court emphasized that the executing court's role is to enforce the decree as written and not to reinterpret or modify it based on subsequent developments or perceived efficiencies related to urban planning



norms. The court directed that the focus should remain on executing the sale of the property as per the terms of the decree, thereby ensuring a clear and final resolution of the matter.

59. Historically, as detailed in the proceedings leading up to the final decree, attempts to partition the subject property repeatedly failed to yield a consensus or practical plan that accommodated the interests of all parties. The decree for sale was a judicial compromise aimed at equitably liquidating the asset to resolve the dispute conclusively.

60. After a thorough review of the submissions, the legislative framework, and the extensive history of litigation surrounding the subject property, we find no grounds to deviate from the final decree that mandates the sale of the subject property. The executing court's role is not to modify or reinterpret the decree but to enforce it as written unless there is a compelling justification to amend it, which is not evident here.

61. The decree in question unequivocally mandates the sale of the property through public auction or equivalent means, and it is the duty of the executing court to adhere to these terms. The suggestions to partition the subject property according to changes in municipal regulations or developments in urban planning, while innovative, do not align with the legal constraints imposed by the decree. The court is bound by the decree's explicit terms, and any alteration to facilitate a partition by metes and bounds or by division of FAR as suggested would constitute an unauthorized modification of the decree.



62. Therefore, in line with judicial precedents and the principles of equity, we affirm the decision of the learned Single Judge. This conclusion brings the matter in line with the legal requirement to execute the decree as it stands and encourages the parties to cooperate in facilitating the sale of the subject property.

63. In view of the above, the appeal stands dismissed.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

MAY 01, 2024
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