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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(OS) 21/2024 and CM Nos.31211/2024, 31212/2024 and 31254/2024**

NATRAJ COMMERCIAL COMPLEX PVT. LTD.Appellant

Through: Mr Gagan Gupta, Senior Advocate
with Mr Rishab Kaushik, Advocate.

versus

SANJEEV KUMAR & ORS.

.....Respondent

Through: Mr S.K. Bhaduri, Mr Abid Khan, Mr
Shreyangana Bag, Ms Neetu Gupta and
Ms Rimpay Rohilla, Advocates for R-1.
Mr Harkirat Singh, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

03.09.2024

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CM APPL. 3212/2014 (for condonation of delay)

1. The appellant has filed the above captioned appeal impugning a preliminary decree dated 29.08.2022 passed by the learned Single Judge in the suit bearing CS(OS) 109/2022 captioned *Sanjeev Kumar v. Rajeev Malhotra & Others*. The said preliminary decree was passed in the above-captioned suit filed by respondent no.1 (plaintiff in the suit – hereafter also referred as *plaintiff*) for partition of the suit property described in the plaint as Land measuring about 5 Bighas and 8 Biswas [5400 sq. yds.] comprised in Khasra No. 2751/734 (New No. 3391/2751/734), Khewat & Khatoni No.28/93 now known as Property no. WZ-2, Basai Darapura, Najafgarh Road, New Delhi (hereafter *the suit property*).

2. It was the plaintiff's case that the suit property was jointly owned by Sh.



Shyam Prakash and Sh. Anand Prakash. Sh. Shyam Prakash expired on 03.04.2021 and his widow Smt. Kailash Malhotra had pre-deceased him. According to the plaintiff, the share of Late Shri Shyam Prakash in the suit property devolved on the plaintiff and respondent nos. 2 and 3 (defendant nos.1 and 2 in the suit). The share of Late Sh. Anand Prakash devolved on his daughter Mrs Aarti Malhotra (respondent no.4/ defendant no.3 in the suit). The material averments made in the plaint were not denied by the defendants. Accordingly, a preliminary decree on admissions was passed holding that 50% share of the suit property belonging to Late Sh. Shyam Prakash had devolved upon the plaintiff, defendant nos.1 and 2 in equal ratio (one third each) and remaining 50% share of Late Sh. Anand Prakash had devolved upon defendant no.3, being the only surviving heir. The Local Commissioner was also appointed for division of the suit property by metes and bounds.

3. The appellant in the present case was not a party to the said suit at the material time. The appellant claims that it had entered into an Agreement to Sell the suit property with Sh. Shyam Prakash and defendant no.3 (Mrs Aarti Malhotra).

4. Admittedly, the appellant was fully aware of the preliminary decree at the material time. The appellant had also filed successive applications before the Trial Court including for impleadment as it claimed that it held interest in the suit property. Notwithstanding the above, the appellant had not taken any steps to assail the preliminary decree at the material time.

5. The appellant has filed the present appeal after an inordinate delay of 599 days. The learned counsel for the appellant submitted the only reason for preferring the present appeal is that the appellant would be precluded from challenging the final decree that may be passed on account of the appellant's



failure to challenge the preliminary decree. However, this does not explain the delay in filing the present appeal.

6. The appellant's contention that it had not challenged the preliminary decree as it was also attempting to resolve the disputes with parties is also not persuasive. The appellant had persuaded defendant no.3 to sell her share in the suit property as determined under the preliminary decree and thus, has also taken the advantage of the same. It is also pointed out that the appellant's application for impleadment on the basis of the Agreement to Sell 25.04.2009 was not accepted. However, the learned Single Judge had impleaded the appellant as defendant no.4, as he had stepped into the shoes of defendant no.3. This is also clear from the order dated 06.03.2023 passed by the learned Single Judge.

7. The learned Single Judge had also clarified that since the appellant had been impleaded as the successor-in-interest of defendant no.3, it shall be bound by the orders passed earlier.

8. Since we find no credible explanation for the delay in filing the present appeal, we are refraining from entertaining the same.

9. The appeal is, accordingly, dismissed. All pending applications are also disposed of.

10. It is clarified that all rights and contentions of the parties are reserved.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 03, 2024
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