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

% ***Judgment reserved on: 25th September, 2026***
Judgment pronounced on: 29th October, 2026

CNR No. DLHC010022752018

\+ RFA 810/2019 & CM APPL. 40358/2019, CM APPL. 41751/2023, CM APPL. 32535/2024

ANTARA MAJUMDAR .....Appellant
Through: Mr. B.K. Mishra, Advocate with Mr. Tarun Majumdar.

versus

VIMLA CHOUDHARY & ORS. .....Respondents
Through: Mr. Vijay Datt Gahtari and Mr. Zeeshan Khan, Advocates for R-1, R-2 and R-4
Mr. Akhil Gupta, Advocate for R-6 and R-7
Ms. Nidhi Mohan Parashar and Mr. Madhav Binzani, *Amicus Curiae*

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 ('CPC') against the order dated 27th February, 2018 and the judgment and decree dated 8th May, 2018 passed by the Additional District Judge, Tis Hazari Courts ('Trial Court') in CS No. 18346/2016 titled

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

'*Vimla Chaudhary & Ors*. v. *Gopal Krishan & Ors*.' ('impugned judgment').

2. By way of the order dated 27th February, 2018, the Trial Court closed the evidence of the defendants. By way of the impugned judgment dated 8th May, 2018, the Trial Court made absolute and final the preliminary decrees dated 9th February, 2011 ('first preliminary decree') and 7th April, 2018 ('second preliminary decree'), whereunder the plaintiffs no. 1 to 4 (respondents no. 1 to 4) and the defendants no. 1 to 3 (respondents no. 5 to 7) were each held entitled to a 1/7th share in the property bearing no. *A-132, Pocket-I, Paschim Puri, Delhi* ('suit property').

3. The appellant before this Court was the defendant no.4 before the Trial Court. The respondents no.1 to 4 before this Court were the plaintiffs no. 1 to 4 before the Trial Court. The respondent no. 5, 6 and 7 were the defendants no. 1, 3 and 2 respectively.

4. The case set up by the respondents no. 1 to 4 (plaintiffs) before the Trial Court was as under.

5. The respondents no.1 to 7 are the descendants of Late Sh. Sukh Dayal Sharma and Late Smt. Kaushlya Devi.

6. The suit property was purchased on 7th October, 1978 in the name of Late Smt. Kaushlya Devi, from one Sh. Suja Lal on the basis of the following documents:

i. Registered Special Power of Attorney in favour of Late Sh. Sukh Dayal (Exh. PW3/15),

ii. Registered General Power of Attorney in favour of Late Sh. Sukh Dayal (Exh. PW3/16),

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

iii. Registered will in favour of Late Smt. Kaushlya Devi (Exh. PW3/18),

iv. Registered receipts in favour of Late Smt. Kaushlya Devi (Exh. PW3/17).

7. The funds for the purchase of the property, as well as the construction raised upon the suit property were partly arranged by the respondent no.1 (plaintiff no.1).

8. Sh. Sukh Dayal Sharma expired in the year 1996 and Smt. Kaushlya Devi expired on 13th March, 2004, both intestate.

9. After the demise of Smt. Kaushlya Devi, a family arrangement/mutual agreement dated 25th March, 2004 came to be executed between the respondent no.1 (plaintiff no.1) and the respondent no.5 (defendant no.1), which recorded that the cost of construction of the suit property had been borne by the respondent no.1 (plaintiff no.1) to the tune of Rs. 2,85,000/-, which was to be reimbursed to her by the other legal heirs in proportion to their respective shares, and that the suit property would thereafter be equally divided amongst all the legal heirs of Late Sh. Sukh Dayal Sharma and Late Smt. Kaushlya Devi.

PROCEEDINGS BEFORE THE TRIAL COURT

10. Apprehending the alienation of the suit property by the respondent no.5 (defendant no.1), the respondents no.1 to 4 (plaintiffs) instituted a suit seeking partition of the suit property, possession of the suit property and the refund of amounts spent by the respondent no.1 (plaintiff no.1) towards the construction of the suit property.

11. The respondents no. 5 to 7 (defendants no. 1 to 3) filed a joint written statement contesting the suit, *inter alia*, on the ground that the respondent

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

no.5 (defendant no.1) was the owner of the suit property and the construction thereupon, by way of a sale by Late Sh. Sukh Dayal in his favour.

12. In response, a replication was filed on behalf of the respondents no.1 to 4 (plaintiffs), denying the assertions in the written statement.

13. By way of order dated 1st September, 2005 under Order XXXIX Rules 1 and 2 CPC, the Trial Court restrained the respondent no.5 (defendant no.1) from alienating or transferring the suit property. The said interim order was extended from time to time, and remained in operation thereafter.

14. *Vide* order dated 21st February, 2006, the Trial Court framed the following issues:

> "(i) Whether the plaintiffs are entitled to the partition of the suit property? If so, at what share? OPP.
>
> (ii) Whether the plaintiffs are entitled to possession, where partition is allowed? OPP.
>
> (iii) Whether the plaintiffs are entitled to any amount, if partition not effected? OPP.
>
> (iv) Relief."

15. The respondents no.1 to 4 (plaintiffs) examined four witnesses and concluded their evidence on 28th April, 2007.

16. The respondents no.6 and 7 (defendants no.3 and 2) examined one witness and concluded their evidence on 16th March, 2009.

17. During the pendency of the suit proceedings, a joint application was filed under Order XXIII Rule 3 CPC by the respondents no.1 to 4 (plaintiffs) and the respondents no. 6 and 7 (defendants no. 3 and 2), i.e., by all the

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

parties except the respondent no.5 (defendant no.1), wherein the respondents no. 6 and 7(defendants no. 3 and 2) admitted that all the parties had a right in the suit property and prayed that the same be partitioned into seven equal shares. They further stated that they had no objection to paying their respective share of the expenses incurred by the respondent no. 1 (plaintiff no.1).

18. In view of the above compromise arrived at between the respondents no.1 to 4 (plaintiffs) and the respondent no. 6 and 7 (defendants no.2 and 3), the Trial Court issued directions to the respondent no. 5 to appear in person. However, the respondent no.5 (defendant no. 1) did not enter appearance in person nor did he lead any evidence. Accordingly, the matter was listed for orders, with liberty to the respondent no.5 (defendant no.1) to make final arguments, if any.

19. *Vide* the first preliminary decree dated 9th February, 2011, the Trial Court directed the respondents no. 5 to 7 (defendants no.1 to 3) to pay a sum of Rs. 42,857/- each to the respondent no.1 (plaintiff no.1) towards their respective 1/7th share in the cost of construction. A preliminary decree of partition was also passed holding that the respondents no. 1 to 7 (plaintiffs no.1 to 4 and defendants no. 1 to 3) were each entitled to a 1/7th share in the suit property. The Trial Court also observed that the respondent no.5 (defendant no.1) had not made out a case for declaration as the absolute and sole owner of the suit property, inasmuch as no evidence was led by him, despite contesting the suit on the ground that he was the actual owner of the suit property by way of sale of the suit property in his favour by his father.

20. After the passing of the first preliminary decree, the parties attempted a settlement. A joint relinquishment/release deed dated 3rd August, 2011 and

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

a compromise deed-cum-Memorandum of Understanding dated 5th August, 2011 were placed on the record of the Trial Court as Exh.C-1 and Exh.C-2. However, the respondent no. 5 (defendant no.1) did not appear before the Trial Court to have his statement recorded, on account of which a court notice was issued to him on 18th August, 2011.

21. A Conveyance Deed came to be executed and registered on 11th May, 2012 by the Delhi Development Authority in favour of the respondent no. 5 (defendant no.1), whereby the leasehold rights in the suit property were converted into freehold rights in his name.

22. Subsequently, on 22nd May, 2012, the respondent no.5 (defendant no.1) executed a registered sale deed in favour of the appellant (defendant no.4) in respect of the suit property for a consideration of Rs. 13,40,000/-.

23. On 13th August, 2012, the appellant (defendant no.4) entered appearance before the Trial Court and informed the Court that she had purchased the suit property from the respondent no.5 (defendant no.1).

24. In 2014, the appellant (defendant no.4) filed an application seeking impleadment under Order I Rule 10(2) read with Section 151 CPC, which was allowed *vide* order dated 21st September, 2015. On the same date, it was brought to the notice of the Trial Court that several proceedings relating to the suit property were pending in different courts. The Trial Court observed that it would be appropriate that the suits be clubbed for the purpose of trial before the same court, for which counsel for the parties sought time to move an appropriate application before this Court. Three Transfer Petitions came to be filed before this Court in relation to the proceedings concerning the suit property.

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

25. On 28th November, 2017, the Trial Court observed that the transfer proceedings had failed and put up the matter for final arguments.

26. *Vide* order dated 5th February, 2018, the Trial Court framed the following additional issue:

"*Whether defendant no. 4 is bonafide purchaser? OPD4*"

27. By the impugned order dated 27th February, 2018, the Trial Court recorded that none had appeared on behalf of the appellant (defendant no.4) and accordingly forfeited the right of the defendants, particularly of the appellant (defendant no.4), to lead evidence. Recording the submission of counsel for the respondents no.1 to 4 (plaintiffs) that the said parties did not wish to lead evidence, the plaintiffs' evidence was also closed.

28. *Vide* the second preliminary decree dated 7th April, 2018, the Trial Court decreed the suit in terms of the first preliminary decree. The additional issue framed, as reproduced in Para 26 hereinabove, was decided against the appellant (defendant no.4) on the ground that the appellant (defendant no.4) did not lead any evidence and had failed to prove that she was a *bona fide* purchaser of the suit property.

29. By way of the impugned judgment and decree dated 8th May, 2018, the Trial Court made absolute and final the first and second preliminary decrees. The Trial Court noted that the suit property was incapable of division by metes and bounds on account of the nature of the structure, and that only the proceeds thereof could be distributed amongst the shareholders. A joint statement of the parties present was recorded separately to that effect.

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

PROCEEDINGS BEFORE THE THIS COURT

30. Aggrieved by the order dated 27th February, 2018 and the impugned judgment and decree dated 8th May, 2018, the appellant (defendant no.4) preferred the present appeal.

31. Notice in the present appeal was issued *vide* order dated 19th September, 2019 on which date this Court directed that status quo *qua* the title of the subject property shall be maintained. The said interim order has been extended from time to time and continues to be in force.

32. On 30th July, 2026, this Court appointed Ms. Nidhi Mohan Parashar, Advocate as *Amicus Curiae* to assist the Court.

33. On 25th September, 2026, submissions of the parties concluded, a note of submissions on behalf of the *Amicus Curiae* was taken on record and the judgment was reserved.

34. To be noted, during the pendency of the appeal, the respondent no. 3 (plaintiff no.3) and the respondent no.5 (defendant no.1) have expired, however the appellant did not take any steps to bring their LRs on record.

SUBMISSIONS ON BEHALF OF THE APPELLANT

35. Mr. B.K. Mishra, counsel appearing on behalf of the appellant (defendant no.4) submits that the impugned order and decree are based on conjectures and surmises.

36. The appellant (defendant no.4) was never afforded a real and effective opportunity to lead evidence on the issue of her being a *bona fide* purchaser, and the said issue was never considered on merits.

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

37. The non-appearance of the appellant (defendant no.4) on 27th February, 2018 and 7th April, 2018 was *bona fide* and attributable to the wrong noting of the date of hearing.

38. The Trial Court forfeited the right of the appellant (defendant no.4) to lead evidence on 27th February, 2018 without issuing any notice to her. Hence, the impugned order is in breach of the principles of natural justice.

39. The Trial Court ought to have appreciated that a Transfer Petition was pending before this Court, and awaited the outcome of the same before proceeding to decree the suit. The respondents no.1 to 4 (plaintiffs) misled the Trial Court by not disclosing the pendency of the Transfer Petition before this Court.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

40. Mr. Vijay Datt Gahtori, counsel appearing on behalf of the respondents no. 1, 2 and 4 (plaintiffs) submits that the purchase of the suit property by the appellant (defendant no.4) is squarely hit by the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 ('TPA'). The suit property was the subject matter of a pending partition suit, wherein an interim order restraining the defendant no. 1 from disposing of the suit property had been passed. Hence, the sale effected by the defendant no.1 in favour of the appellant was in the teeth of the said interim order and the preliminary decree dated 9th February, 2011.

41. The appellant (defendant no.4) purchased the suit property in collusion with the respondent no.5 (defendant no. 1), with full knowledge that the same was the subject matter of a pending suit, evidenced by the nominal consideration of Rs. 13,40,000/- paid.

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

42. In any case, the first preliminary decree dated 9th February, 2011 remains unchallenged and has attained finality. The appellant (defendant no.4) entered appearance before the Trial Court on 13th August, 2012 and was impleaded on 21st September, 2015. However, no application was made for the setting aside of the first preliminary decree. Reliance in this regard is placed upon ***Venkata Reddy & Ors.* v. *Pethi Reddy*, AIR 1963 SC 992**.

43. The Trial Court adjourned the suit on multiple occasions, however, none appeared for the appellant (defendant no.4) on various dates.

44. The submission of the appellant (defendant no.4) with respect to the pendency of the Transfer Petitions is misconceived, inasmuch as the respondents had raised no objection to the clubbing of the suits. TR.P.(C.) 64/2016 was dismissed on 1st September, 2017 and TR.P.(C.) 170/2017 was rejected on 3rd November, 2017, both prior to the impugned order dated 27th February, 2018.

45. Without prejudice to the above submissions, the present appeal is liable to be dismissed on account of the fact that despite multiple orders providing opportunity for the same, no application has been filed by the appellant to bring on record the legal representatives of the deceased respondent no.3 (plaintiff no.3) and the respondent no.5 (defendant no. 1). Consequently, the appeal stands abated *qua* the said respondents.

46. Mr. Akhil Gupta, counsel appearing on behalf of the respondents no. 6 and 7 (defendants no. 3 and 2), adopts the submissions made on behalf of the respondents no. 1,2 and 4 (plaintiffs no.1,2 and 4).

SUBMISSIONS ON BEHALF OF THE *AMICUS CURIAE*

47. Ms. Nidhi Mohan Parashar, Amicus Curiae, submits that while the appellant (defendant no.4) has been proceeded ex-parte in the impugned

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

judgment and decree, the appellant has to make out 'sufficient cause' for non-appearance. In terms of ***G.P. Shrivastava* v. *R.K Raizada & Ors***, (2000) 3 SCC 54, discretion may be exercised in favour of a party that approached the courts immediately. In this regard, the *Amicus Curiae* highlights the conduct of the appellant (defendant no.4) before this Court, including *inter alia* the delay of 40 days in refiling of the appeal, the repeated adjournments sought by the appellant (defendant no.4), and the failure of the appellant (defendant no.4) to implead the LRs of the deceased respondent no. 3 (plaintiff no.3) and the deceased respondent no.5 (defendant no.1).

48. She further submits that a transferee pendente lite is bound by the decree, even when the subsequent purchaser may be a *bona fide* purchaser without notice of the decree. Reference in this regard may be made to ***Shingara Singh* v. *Daljit Singh and Anr***, 2024 INSC 770 and ***Balwant Singh* v. *Buta Ram and Ors***, 2009 SCC Online P&H 6642. In the present case, the conveyance deed dated 22nd May, 2012, was executed in favour of the appellant (defendant no.4) after the first preliminary decree dated 9th February, 2011, was passed, which has not been challenged in the present appeal.

ANALYSIS AND FINDINGS

49. I have heard the counsel for the parties and perused the record of the appeal.

50. It is the case of the appellant (defendant no.4) that a registered sale deed was executed in her favour on 22nd May, 2012 by the respondent no.5 (defendant no.1) for a sum of Rs.13,40,000/-. Immediately thereafter, on 13th August, 2012, the appellant (defendant no.4) entered appearance in the suit before the Trial Court claiming that she was a purchaser of the suit property.

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

The statement of the appellant (defendant no.4) and the respondent no.5 (defendant no.1) to this effect was also recorded before the Trial Court.

51. Subsequently, the appellant (defendant no.4) filed an application under Order I Rule 10 CPC, seeking impleadment as a party in the suit, which was allowed by the Trial Court on 21st September, 2015. The appellant (defendant no.4) informed the Court that she had filed another suit for injunction relating to the suit property, which was pending before the Civil Court.

52. On various dates thereafter, the respondent no.5 (defendant no.1) and the appellant (defendant no.4) sought time for the transfer of the cases to one court. However, *vide* order dated 28th November, 2017, the Trial Court recorded that the transfer of the cases to one court had failed and therefore, the matter was put for final arguments. Pertinently, this order was passed in the presence of the advocate of the appellant (defendant no.4). Thereafter, the matter was put up for hearing on various dates, however, the appellant (defendant no.4) failed to appear on the said dates.

53. In the order passed on 5th February, 2018, the Trial Court noted that the appellant (defendant no.4) had filed her written statement and framed an additional issue, i.e., "*Whether defendant no.4 is a bonafide purchaser? OPD4.*".

54. On 27th February, 2018, Trial Court closed the right of the appellant (defendant no.4) to lead evidence due to non-appearance and put the matter for final arguments on 7th April, 2018. On 7th April, 2018, the Trial Court passed a preliminary decree to the effect that the plaintiffs and the defendants no.1 to 3 (respondents no.1 to 7 herein) shall be entitled to 1/7th

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

share in the suit property. It was also recorded that the appellant (defendant no.4) had failed to prove that she is a *bona fide* purchaser.

55. Ultimately, on 8th May, 2018, the Trial Court passed the final decree. Once again, there was no appearance on behalf of the appellant (defendant no.4).

56. It is well settled that an *ex-parte* decree cannot be set aside unless sufficient cause is shown by the relevant party for the said non-appearance. Reference in this regard may be made to ***G.P. Shrivastava* v. *R.K Raizada & Ors***, (2000) 3 SCC 54. The relevant extract from the said judgment is set out below:

> *"Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing.* ***Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree****. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party…*
>
> *…..****In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional.*** *For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits*."
>
> (emphasis supplied)

57. The appellant (defendant no.4) failed to provide sufficient cause for her non-appearance on various dates with effect from 9th January, 2018. i.e., 9th January, 2018, 29th January, 2018, 5th February, 2018, 27th February, 2018, 7th April, 2018 and 8th May, 2018. It is a matter of record that the

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

appellant (defendant no.4) did not file an application under Order 9 Rule 13 CPC for setting aside of the *ex-parte* decree.

58. A perusal of the proceedings before the Trial Court, as summarized above, shows that ample opportunity was given by the Trial Court to the appellant to get the other suits transferred and consolidated with the present suit. It was on 28th November, 2017 that the Trial Court noted that the consolidation and transfer has failed.

59. Pertinently, the Transfer Petitions, TR.P.(C) 64/2016 and TR.P.(C) were dismissed *vide* orders dated 1st September, 2017 and 3rd November, 2017 respectively, prior to the second preliminary decree which was passed on 7th April, 2018. Insofar as the third Transfer Petition, i.e., TR.P.(C.) 6/2018 is concerned, the pendency of the same was not brought to the attention of the Trial Court by the appellant (defendant no.4), as she stopped appearing before the Trial Court. In fact, this Court, *vide* order dated 20th April, 2018 in TR.P.(C.) 6/2018, noted that the appellant had neither filed the process fee nor taken steps to serve the respondents therein. Subsequently, the said petition was dismissed as infructuous on 22nd May 2018 in view of the impugned judgment and decree.

60. In these circumstances, this Court does not find any merit in the submission of the appellant (defendant no.4) that the Trial Court should have awaited the outcome of the Transfer Petition before proceeding to decree the present suit.

61. It is a settled proposition of law that a transferee *pendente lite* is bound by the decree already passed. Once, it is established that a sale is executed during the pendency of a suit, doctrine of *lis pendens* in terms of Section 52 TPA would apply and it would not matter if the purchaser is a

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

bona fide purchaser or not. Reference in this regard may be made to ***Shingara Singh* v. *Daljit Singh and Anr***, 2024 INSC 770 and ***Balwant Singh* v. *Buta Ram and Ors***, 2009 SCC Online P&H 6642.

62. The relevant observations of the Supreme Court in ***Shingara Singh* v. *Daljit Singh and Anr,*** 2024 INSC 770 are set out below:

> "*14. In a recent judgment of this Court in Chander Bhan (D) through Lr. Sher Singh vs. Mukhtiar Singh & Ors. it is observed, "once it has been held that the transactions executed by the respondents are illegal due to the doctrine of lis pendens the defence of the respondents 1 – 2 that they are bona fide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Transfer of Property Act, 1882 is liable to be rejected."*
>
> *15. In the case in hand also, it is an admitted position that the suit was filed on 24.12.1992 and the sale deed was executed on 08.01.1993 by defendant no. 1 in favour of defendant no. 2/appellant during pendency of the suit. The doctrine of lis pendens as contained in Section 52 of the Transfer of Property Act, 1882 applies to a transaction during pendency of the suit. The Trial Court found execution of agreement to be proved and directed for refund of the amount of Rs. 40,000/- by defendant no. 1 to the plaintiff/appellant with further finding on issue no. 5 that the agreement was not a result of fraud and collusion. The defendant did not prefer any cross-appeal or cross objections against the said partial decree and allowed the finding to become final. The plaintiff was non-suited only on the ground that defendant no. 2 had no notice of the agreement and is a bona fide purchaser. However, once sale agreement is proved and the subsequent sale was during pendency of the suit hit by the doctrine of lis pendens, the High Court was fully justified in setting aside the judgment and decree of the Trial Court and the First Appellate Court and passing a decree for "specific performance".*"

63. Admittedly, in the present case, the preliminary decree in the suit had already been passed on 9th February, 2011 and the sale deed in favour of the appellant was executed after the said date. Therefore, the doctrine of *lis pendens* would apply and title in favour of the appellant would be

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

subservient to the preliminary decree, which declared the share of each of the respondents no.1 to 4 (plaintiffs) and the respondents no. 5 to 7 (defendants no.1 to 3) as 1/7th each.

64. Despite becoming a party in the present suit on 21st September, 2015, the appellant (defendant no.4) has not challenged the preliminary decree dated 9th February, 2011, nor has she challenged the second preliminary decree dated 7th April, 2018..

65. The Supreme Court in ***Venkata Reddy & Ors.*** **v.** ***Pethi Reddy***, 1962 SCC OnLine SC 320 has held that a preliminary decree passed in a partition suit is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. The relevant observations from the said judgment are set out below:

> *"...A decision is said to be final when, so far as the court rendering it is concerned, it is unalterable except by resort to such provisions of the Code of Civil Procedure as permit its reversal, modification or amendment. Similarly, a final decision would mean a decision which would operate as res judicata between the parties if it is not sought to be modified or reversed by preferring an appeal or a revision or a review application as is permitted by the Code.* ***A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive.*** ***No doubt, in suits which contemplate the making of two decrees a preliminary decree and a final decree — the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable****. The legislature in its wisdom has thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made the decision of the court arrived at the earlier stage also has a finality attached to it.* ***It would be relevant to refer to Section 97 of the Code of Civil Procedure which provides that where a party aggrieved by a preliminary decree does not appeal from it, he is precluded from disputing its correctness in any appeal which may be***

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37

preferred from the final decree. This provision thus clearly indicates that as to the matters covered by it, a preliminary decree is regarded as embodying the final decision of the court passing that decree…"

(emphasis supplied)

66. In view of the discussion above, the appellant (defendant no.4) has failed to make out a case for interference with the impugned order dated 27th February, 2018 and the impugned judgment and decree dated 8th May, 2018.

67. Accordingly, the appeal is dismissed.

68. Pending applications stand disposed of.

AMIT BANSAL
(JUDGE)

OCTOBER 29, 2026
Vivek/-

Signature Not Verified
Signed By:AARZOO
Signing Date:29.10.2026
12:28:37