

Nirmal Kaur Vs. Surjit Kaur and Others

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Court : Delhi

Decided On : Nov-04-2015

Judge : Manmohan Singh

Appeal No. : Ex.P. No. 233 of 2010

Appellant : Nirmal Kaur

Respondent : Surjit Kaur and Others

Judgement :

E.A.(OS) No.122/2011 (objections filed by JD-4),

E.A. (OS) No.114/2011 (objections filed by Objector Karishma),

E.A. (OS) No.728/2014 (objections filed by objector Harinder Singh) and E.A. (OS) No.729/2014 (for stay)

1. By way of this order, I propose to decide the objections filed by judgment-debtor No.4 being E.A.(OS) No.122/2011 as well as on behalf of Ms.Karishma daughter of Late Mr.Vijay Virdhi and grand-daughter of Late Sh.Joginder Singh Dhiman, being E.A.(OS) No.114/2011 and also on behalf of another Objector Mr.Harinder Singh, being E.A.(OS) No.728/2014 and his application for stay being E.A.(OS) No.729/2014.

2. Brief facts of the case are that the Sale Deed of plot No.C-18, Mansoraver Garden, New Delhi (hereinafter referred to as the suit property ?) was executed on 10th May, 1965 by Bharat Builders and Colonizers, in favour of Late Sh.Chanan Ram, for sale consideration of Rs.12,800/- which was registered on 20th May, 1965.

3. Late Sh.Chanan Ram by his last Will and Testament dated 27th March, 1979, bequeathed the suit property in equal shares to his two sons i.e. Sh.Joginder Singh, predecessor in interest of the judgment-debtors and Sh.Inderjit Singh, predecessor-in-interest of the decree-holder.

4. The suit property was mutated by MCD in the names of late Inderjeet Singh and Sh.Joginder Singh on 21st March, 1988.

5. Late Inderjit Singh vide his last Will and Testament dated 2nd December, 2004, duly registered, bequeathed his half share in the suit property to his wife, decree-holder.

6. Since the suit property had not been partitioned, the decree-holder filed a suit for partition bearing CS (OS) No.593/2006 on 4th April, 2006 for partition of the suit property, stating that the decree-holder on the one hand and the judgment-debtors on the other as legal heirs of late Joginder Singh, were owners of 50% share each of the suit property in view of the Will dated 27th March, 1979 of Late Chanan Ram. The suit was listed for hearing on 4th April, 2006 and this Court issued notice to the judgment-debtors (defendants in the suit) and directed the parties to maintain status quo with regard to the possession and title of the suit property.

7. Written statement was filed by all the defendants/judgment-debtors on 24th August, 2006, admitting ownership of 50% of the suit property by decree-holder and 50% by judgment-debtors. The suit was mainly contested by judgment-debtor No.4, Mr.Ravi Dhiman who is using the suit property.

8. In the order dated 5th October, 2006, it was recorded that there was no dispute as to ownership and in view of the above admitted position, a Local Commissioner

was appointed to visit the suit property, make a site plan and to report respective occupation of the suit property by the parties. The Local Commissioner submitted his report on 8th November, 2006 that the suit property was in occupation of judgment-debtor No.4 and entry to the same was only from the front side.

9. On 8th August, 2007, another Local Commissioner, Sh.Y.D.Nagar, Advocate, who is also an Engineer, was appointed by this Court to inspect the suit property and to ascertain whether the same can be divided into two equal shares by metes and bounds. On 29th October, 2007, Sh.Y.D.Nagar carried out measurements of the suit property and found the same to be 611 sq. yards instead of 800 sq. yards. He found that the front of the property facing the main 30 meter wide Rama Road (East) is 50 feet in width and the plot stood reduced to 28 feet at the rear of the property. He prepared a site plan which is on page No. 14 of the report of Mr.Y.D.Nagar dated 29th October, 2007. Mr.Y.D.Nagar clearly opined in his report that the property can be divided into two equal parts from the front to the back in the centre, horizontally giving 25 feet each to the plaintiff/decreed-holder and defendants/judgment-debtors on the front side and 14 feet each on the rear side, each of the parties getting 50% coming to 305.5 sq. yards, total area being 611 sq. yards.

10. Since there was no dispute with regard to the share of the parties in the suit property, a preliminary decree was passed on 29th September, 2008, holding the decree-holder, on one hand, to be owner of 50% owner of suit property, the other 50% being owned by judgment-debtors. Against the preliminary decree dated 29th September, 2008, the judgment-debtors filed an appeal before the Division Bench of this Court being RFA (OS) No.1/2009.

11. The Division Bench dismissed the appeal being RFA No.1/2009 vide order dated 7th January, 2009. The alleged document of partition dated 22nd April, 1994 relied upon by judgment-debtors was perused by the Division bench which ultimately held that there was no partition by metes and bounds.

12. Judgment-debtors preferred Special Leave Petition being SLP(C) No.2140/2009 in the Supreme Court. The Supreme Court passed the following order on 9th February, 2009. The relevant para of the said order reads as under:-

We do not find any reason to interfere with the impugned order. However, all questions shall remain open, including the question about the report of the Local Commissioner. The Special Leave Petition is disposed of with these observations.
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13. Final Decree, in terms of preliminary decree, was passed on 23rd December, 2009 and all aspects were considered, holding decree-holder and judgment-debtors being entitled to ownership of 50% share each in the suit property and that the same be partitioned by metes and bounds as suggested by Local Commissioner Sh.Y.D.Nagar.

14. On 19th February, 2010, RFA (OS) No.13/10 was filed by the judgment-debtors against the final decree dated 23rd December, 2009 passed by the Single Judge and the appeal was dismissed by the Division bench vide order dated 19th February, 2010 and cost of Rs.15,000/-, was also imposed. The Division Bench found that the judgment-debtors were in occupation and that is why they had been delaying the proceedings.

15. Subsequently, the decree-holder filed the present execution petition on 17th July, 2010.

16. Special Leave Petition No.25327/2010 against above order dated 19th February, 2010 in RFA (OS) No.13/2010, was filed which was dismissed by the Supreme Court on 24th September, 2010.

17. Firstly, I shall deal with the objections filed on behalf of the judgment-debtor No.4 being E.A.(OS) No.122/2011, under Order XXI Rules 97, 99 and 101 read with Section 151 CPC. It is stated that the judgment dated 23rd December, 2009 is not executable. Secondly, the suit property cannot be divided in view of Master Plan “ 2021, Delhi Municipal Corporation Act and the DDA Act. The suit property is indivisible as there are six shareholders of the property (decree-holder 50% share and five judgment-debtors 10% each). The suit property measures 611 sq. yards as per judgment dated 23rd December, 2009 and the judgment-debtors together get 50% thereof i.e. 305.5 sq. yards and each judgment-debtor gets only 60 sq. yards which would mean small strip of the land and, therefore, physical division of

the suit property is not feasible in the facts and circumstances of the case amongst all the shareholders of the suit property. It is held by the Supreme Court in *Badri Narain Prasad Choudhary and others v. Nil Ratan Sarkar*, AIR 1978 SC 845 that in case the suit property cannot be partitioned by metes and bounds without destroying its intrinsic worth, the Court can devise such other feasible method for effecting partition as may appear to it to be just and equitable. Thus, if the suit property is divided into strips of 60 sq. yards, it would definitely destroy its intrinsic worth. Thirdly, the judgment dated 23rd December, 2009 is passed on the basis of the Will dated 27th March, 1979 without obtaining probate thereof.

18. It is rightly stated by the decree-holder that the filing of requisite stamp paper is only directory and not mandatory. The said requirement could be fulfilled at any point of time. It is just a frivolous objection that the final decree is non-executable. The judgment-debtor No.4 during arguments did not argue this point and even otherwise, the judgment-debtor No.4 is not able to satisfy that a final decree drawn on a stamp paper is only executable. The Executing Court cannot go behind the decree.

19. So far as the role of Local Commissioner is concerned, he has to act as per the directions of the Court. There is also no force in the submissions that the suit property cannot be divided in view of the Master Plan 2021, DMC Act or DDA Act. The said objection is not argued by the judgment-debtor No.4 at the time of hearing. The judgment-debtor No.4/objector cannot go behind the decree already passed by this Court. It is incorrect to allege that the suit property is indivisible. The division of property amongst the judgment-debtors (or legal heirs of Sh.Joginder Singh) is their choice. With regard to the present decree, the same is for partition of 50% share of the decree-holder on one hand and 50% share of the judgment-debtors on the other hand. The alleged partition of remaining 50% amongst the judgment-debtors is the problem of the decree-holder and has no concern with the judgment-debtors. Even otherwise, it is submitted that the said 50% can also be partitioned amongst the judgment-debtors and such physical division is possible. The judgment of *Badri Narain* (supra) is not applicable to the facts and circumstances of the present case as while passing the decree, this Court has devised a feasible method in the present case which is just and

equitable. The final decree has been passed in terms of the report of the Local Commissioner. The suit property has to be divided into two which would not destroy its intrinsic value. The final decree has been upto the Supreme Court. Due respect has to be given to the judgments passed from time to time. The present objections are, in fact, a third round of litigation. As per settled law, the probate of Will is not required as the same has already been admitted by the judgment-debtors, acted upon and the Will has already been dealt with in the present proceedings.

20. It is not correct to say that judgment dated 23rd December, 2009 is bad for non-joinder of necessary parties. Any alleged legal heir of late Chanan Ram has not been joined. Without prejudice to the aforesaid, even if there is any other alleged legal heir of Chanan Ram through the judgment-debtors or having share in 50% of the share of the judgment-debtors does not make any difference in the right and share of 50% of the decree-holder. The same can be recovered from the share of the judgment-debtors by any legal heirs. The objector was the party in the suit from the very beginning. The same issue cannot be re-agitated over and again. The objections are highly misconceived. The same are dismissed with costs of Rs.20,000/-. The cost shall be deposited by the objector/judgment-debtor No.4 with the Delhi High Court Mediation and Conciliation Centre within two weeks.

21. Now, I shall deal with the objections on behalf of Ms.Karishma daughter of Late Smt.Vijay Virdhi and grand-daughter of Late Sh.Joginder Singh Dhiman, being E.A.(OS) No.114/2011 under Order XXI Rules 97 and 101 read with Section 151 CPC, through Sh.Balwant Singh. Numbers of objections raised by Ms.Karishma are similar as raised by the judgment-debtor No.4/objector. These have already been dealt by the Court. Thus, it is not necessary to be dealt with again. It is stated that the plaintiff/decreed-holder has suppressed the fact that late Sh.Joginder Singh Dhiman has one more daughter, namely, Smt.Vijay Virdhi. She was married to Sh.Charanjit Singh Virdhi. Both Smt.Vijay Virdhi and Sh.Charanjit Singh have expired. Smt.Vijay Virdhi died in 2002 and Sh.Charanjit Singh died in 1998. They are survived by their minor daughter Ms.Karishma who was aged about 11 years. The plaintiff/decreed-holder did not implead Ms.Karishma as one of the defendants/judgment-debtors in the suit, although the plaintiff/decreed-holder

impleaded another daughter of Sh.Joginder Singh Dhiman as defendant No.5 (judgment-debtor No.5). Even the defendants/judgment debtors have failed to disclose the aforesaid fact to this Court. Ms.Karishma was residing with defendant No.4 at Delhi who has vested and legal right in the properties left behind by Sh.Chanan Ram (maternal great grand-father) and Sh.Joginder Singh Dhiman (maternal grand-father). It is submitted that the impugned judgment and decree is a nullity and is liable to be set-aside.

22. Sh.Chanan Ram never executed any Will dated 27th March, 1979 and it is a forged and fabricated document. The suit property or any other property was never partitioned orally between Sh.Inderjeet Singh and Sh.Joginder Singh Dhiman and it was not reduced in writing on 22nd April, 1994 between Sh.Inderjeet Singh and legal heirs of late Sh.Joginder Singh. Admittedly, Smt.Vijay Virdhi is not a party to the said Memorandum of Partition. The suit property and other properties are HUF properties. Therefore, Late Sh.Chanan Ram had no right to execute Will dated 27th March, 1979.

23. It is submitted that the suit property cannot also be divided considering the number of shareholders therein as there are six legal heirs of late Sh.Joginder Singh Dhiman and one of Sh.Inderjeet Singh Dhiman. In terms of Section 2 of the Indian Partition Act, 1893, if considering the number of the shareholders, a division of the property cannot take place then the Court can direct the sale of the property. It is submitted that suit property cannot be divided into seven parts.

24. On 30th November, 2010, Shri Balwant Singh came to know through Sh.Satish Kumar who is known to defendant/judgment-debtor No.4 that the share of the objector has not been given in the property of her maternal great grand-father.

25. The objector has admitted that she is residing with defendant No.4 at Delhi. Admittedly, Sh.Channan Ram being the original owner of the suit property as per Will dated 27th March, 1979 bequeathed the said property in equal shares to his two sons i.e. Sh.Joginder Singh (of whom defendants/ judgment-debtors are legal heirs) and Sh.Inderjit Singh (deceased husband of the plaintiff/decreed-holder who by his Will dated 2nd December, 2004 bequeathed his share to plaintiff/decreed-holder). Further, there is admittedly no dispute that plaintiff/decreed-holder on one

hand is owner of 50% of the property. It is correctly argued on behalf of the decree-holder that even if Ms.Karishma alleges any right, the same has to be out of the other remaining 50% of the defendants/judgment-debtors (which has come to them from the other son Sh.Joginder Singh), to which the plaintiff/decreed-holder has no concern. The decree of partition with regard to the property has been passed by this Court and the property has to be divided physically by metes and bounds by dividing the same into two equal halves in terms of the report of the Local Commissioner and allocating one half to the plaintiff/decreed-holder and handing over the possession of the portion allocated to plaintiff/decreed-holder, to which Ms.Karishma has no concern. It is further submitted, without prejudice, to the aforesaid that even if there is any other alleged legal heir of Sh.Chanan Ram through the judgment-debtors or having share in 50% of the share of the judgment debtor, the same does not make any difference in the right and share of 50% the plaintiff/decreed-holder and in allocation of share of 50% of the plaintiff/decreed-holder and in handing over the possession of the same to the plaintiff/decreed-holder.

26. It is submitted that it is correct that the plaintiff/decreed-holder is claiming her rights on the basis of alleged Will dated 27th March, 1979 of late Sh.Chanan Ram. The same not being probated makes no difference. It is denied by the decree-holder that it was incumbent upon the plaintiff/decreed-holder to implead other legal heirs of daughter of Late Sh.Chanan Ram or that she had any rights or that her rights were effected or that she could have objected to the execution or validity of the Will dated 27th March, 1979.

27. It is the admitted position that late Sh.Chanan Ram having various properties in Punjab and Delhi and the Will being executed in Sangrur (Punjab) is a matter of record. It is denied by the decree-holder that unless the Will is probated or letters of Administration granted, the same cannot be relied upon or that the Will cannot be the basis of partition of suit property unless probated. No such pleas were raised and in any event, all pleas raised by judgment-debtors were dealt with while passing of preliminary and final decrees, both upto the Supreme Court.

28. For the sake of repetition and in order to consider the objections of the objector, the extracts of the Will are reproduced herein below:-

I, Chanan Ram son of Sh.Jati Ram grandson of Shri Hazari Lal is resident of Mohalla Krishna Bati, Sangrur.

That I have become old and at present I am 73 years of age. My wife is Smt. Parsini Devi. I have three sons namely Joginder Singh, Surinder Singh and Inderjeet. And beside them I have five daughters namely Smt. Dayawanti wife of Sh. Gurdial Singh Kalsi Miller Ganj, Ludhiana and Smt.Satya Wati wife of Shri Ajit Singh Roopal, Greater Kailash, New Delhi and Smt. Bhupinder Kaur wife of Shri Prem Chand R/o Khanna and Smt. Narinder Kaur wife of Sh. Dayal Saran Birdi R/o Montanga, Dr. Amedkar Road, Bombay and Smt. Amarjeet Kaur wife of Sh.Iqbal Singh Sangu Tanda Road, Jalandhar. I have got married all my three sons and five daughters and my daughters have been married in good families and they are happy in their respective homes and I have spent enough money on the marriage of my five daughters. Between my above three sons Surinder Singh is my middle son and he is residing at New Delhi for the last about 12/13 years. By the grace of God I have made huge property during my life time. And besides this my three sons have their common business in Delhi and Sangrur. The land, factory building, factory machinery in Delhi and amount spent there is also common. And the machinery and business in Sangrur and money is also common. The building on which this business is at Sangrur that land and building is not common rather that is on partnership and is taken on rent. Besides this my three sons are having properties separately in their own names. Out of which some property has been disposed of by Joginder from his share, had invested the entire amount in the common factory and business in the name of my three sons at Delhi and Sangrur. Similarly Inderjeet Singh also disposed of some property and had invested the entire amount in the common factory and business in the name of my three sons. But the property which is in the name of Surinder Singh, he had not sold any property out of that nor he invested any money in the common business by selling his property. I am being looked after by my wife Smt. Parsini Devi and my sons Joginger Singh and Inderjeet Singh and I am very happy with their services. My elder son Joginder Singh is having his sons Rattan Pal and Rajbeer

and Ravi, with whom I have great love and affection and they three also look after me very well. My three sons reside separately and they are running good business. Now I make the following WILL of my all immovable and movable properties with my own free will without any pressure and in my full senses and sound mind that I am the owner of my immovable and movable properties at present and which is left after my death, my sons Joginder Singh and Inderjeet Singh will be the owners in equal shares and none of heirs will have any concern in my immovable properties which will be left after my death nor any other my legal heirs will have any right. And my movable properties which is left after my death and my share in the firm M/s Dhiman Foundries Sangrur, the money of my share in it, will be owned by my son Inderjeet and by my grandsons Rattan Pal, Rajber and Ravi in three equal shares, after my death. And my other legal heirs will have no right of any kind in my movable properties which is owned by me at the time of my death. My daughters and their children will have no right in my immovable and moveable properties after my death. Reason for the same has been written above. Similarly my son Surinder Singh and his children will have no right in my immovable and moveable properties after my death. Reason for the same has been written above. Besides this it is also a reason that Surinder Singh does not look after me and he has also much more properties than my other two sons and he is also happy than my other two sons. By my this WILL I have not given any property to my wife Smt. Parsini Devi, But it will be necessary for my two sons Joginder Singh and Inderjeet that after my death they both will give Rs.400/- per month to my wife Smt. Parsini Devi in equal share (Rs.200/- per month by Joginder Singh and Rs.200/- per month by Inderjeet) and continue to till the time she is alive. And this amount of her survival will be charge and security on my immovable and movable properties of which my sons Joginder Singh and Inderjeet will be the owners and till the time I am alive I am the owner of all my immovable and moveable properties and I am entitled to use and transfer my properties in any manner. I have not made any WILL prior to it. But my son Surinder Singh had got my signatures several years back on blank letter Pads or papers on the pretext to submit before some department. If he produce any WILL in his favour or in favour of his children that will be totally false and forged because I have never executed any WILL in his favour nor I have executed any other WILL till today except this

WILL. I shall have the right to revoke this WILL at any time. If I revoke this WILL, I will revoke only through a registered document. Because after the death of the owner of the properties, many a times false and forged WILLS are prepared.

Therefore, I execute this WILL with my full senses and sound mind with my free will so that it will be used at the time to come. I appoint my both sons Joginder Singh and Inderjeet as the executors to execute this Will.

DATED 27 March 1979 Day Tuesday Place: Sangrur

Witness		Witness
Sh. Nanand	Executant	Balbir Singh
Chnd Kalra	Chanan Ram	Butt s/o Khazan
Ex.M.P. S/o	sd/- Chanan	Singh Butt Purani
Sh.Tirath	Ram	Mandi,
Das Sangrur		Sangrur

The above said WILL has been got written by the Executant Chanan Ram in the presence of the witnesses and before the Writer and after hearing and admitting it correct he signed before the above said witnesses and the Writer and both the witnesses above mentioned signed as witnesses before each other and before the Executant Chanan Ram and put their signatures respectively. ?

29. The alleged Partition Deed/Memorandum is denied. It is not a registered document and there being no original, it cannot be looked into for any purpose. This has been duly dealt with by the Division Bench of this Court while dismissing the appeal of the judgment-debtors. The other plea is that the suit property or other properties are HUF properties or that late Sh.Chanan Ram had no right to execute Will dated 27th March, 1979, the same are false pleas raised in these execution proceedings and cannot be looked into and as this Court will not go behind the decree which has been upheld upto the Supreme Court two times. The objector cannot go behind the decree already passed by this Court. It is denied

that the suit property cannot be divided. The division of property amongst the judgment-debtors (or legal heirs of Sh.Joginder Singh) is their choice. As far as the present decree is concerned, the same is for partition of 50% share of the decree-holder on one hand and 50% share of the judgment-debtors on the other hand.

30. The suit property can be reasonably and conveniently divided into two in terms of the Report of the Local Commissioner in terms of which decree has been passed. Even otherwise, it is submitted that the said 50% can also be reasonable and conveniently partitioned amongst the judgment-debtors (or legal heirs of Sh.Joginder Singh).

31. It is denied that on 30th November, 2010, Balwant Singh came to know through some Sh.Satish about the pendency of the present execution petition. It is denied that the objector is not entitled to any share. Even otherwise, without prejudice to the aforesaid, if Ms.Karishma alleges any right, the same has to be out of the other remaining 50% of the defendants/judgment-debtors (which has come to them from the other son Sh.Joginder Singh) to which the plaintiff/decreed-holder has no concern. The Decree of partition with regard to the property has been passed by this Court and the property has to be divided physically by metes and bounds by dividing the same into two equal shares and allocating one half to the plaintiff/decreed-holder and handing over the possession of the portion allocated to plaintiff/decreed-holder, to which Ms.Karishma has no concern. Even if there is any other alleged legal heir of Chanan Ram through the judgment-debtors or having share in 50% of the share of the judgment-debtors, the same does not make any difference in the right and share of 50% of the plaintiff/decreed-holder and in allocation of share of 50% of the plaintiff/decreed-holder and in handing over the possession of the same to the plaintiff/decreed-holder. Further, it is submitted that as admitted by the present Objector, Ms.Karishma is staying with judgment-debtor No.4 who is her real maternal uncle. Therefore, it is false that Ms.Karishma or her close relatives would not have known about the pendency of the present execution petition especially when her real maternal uncles/aunt were party to the suit and are also judgment-debtors in the present execution petition. It is the judgment-debtor No.4 who has been mainly contesting the proceedings. The malafides of the objector are also clear from the fact that the present application is

filed by some second cousin of Ms.Karishma whereas the real maternal uncles (especially judgment-debtor No.4 with whom Ms.Karishma is residing) and maternal aunt have not come forward deliberately and malafidely. The objections are filed through Balwant Singh. The same are not signed by Ms.Karishma. No authority in favour of Balwant Singh has been filed. He is just a stranger to the litigation. No proper procedure has been followed by Balwant Singh. The objections even on merits are misconceived. The same are filed by a stranger in order to delay the execution. The objections are dismissed with costs of Rs.20,000/- to be deposited with the Delhi High Court Mediation and Conciliation Centre within two weeks from today.

32. Third set of objections is filed on behalf of Mr.Harinder Singh son of late Sh.Surinder Singh being E.A.(OS) No.728/2014, under Order XXI Rules 97, 99 read with Rule 101 and further read with Section 151 CPC.

33. He is the son of late Sh.Surinder Singh and is the grandson of late Sh.Chanan Ram. Sh.Surinder Singh died on 20th May, 2001 leaving behind the objector and Smt.Raman Kaur (daughter) as the only legal heirs. Sh.Chanan Ram was the Karta of M/s Jatti Ram Chanan Ram HUF (HL) which is allegedly in existence even prior to 1947.

34. It is stated in the application that the entire movable, immovable properties and business were owned and possessed by M/s Jatti Ram Chanan Ram and were for the benefit and enjoyment of the members and coparceners and are still in for the benefit and enjoyment of the entire HUF and no one has any right whatsoever to deal with or dispose of the properties of the HUF as an individual property and on 8th September, 2014, the objector was speaking to his cousin Sh.Surinder Singh son of Sh.Jeet Singh Ropal, resident of N-113, G.K. Part-I, New Delhi regarding attending of ring ceremony of Sh.Manhar Dhiman son of late Sh.Inderjeet Singh to be held on 5th October, 2014 and he was informed by him that family of late Sh.Joginder Singh may not attend the function of Manhar Dhiman as they have strained relations on account of property dispute in respect of the suit property pending in this Court. He thereupon after searching the cases on the site of this Court through his staff came to know about the pendency of the present case and

the earlier cases between the decree-holder and judgment-debtor No.1 wife of late Sh.Joginder Singh and found that the decree-holder and the judgment-debtors have obtained a collusive preliminary decree dated 29th September, 2008 in CS(OS) No.593/2006 on the basis of some alleged will dated 27th March, 1979 of late Sh.Chanan Ram whereby late Sh.Chanan Ram bequeathed 50% shares each in favour of Inderjeet Singh and Sh.Joginder Singh excluding all other legal heirs i.e. late Sh.Surinder Singh father of the objector (third son of Sh.Chanan Ram) and five daughters of Sh.Chanan Ram. The Will dated 27th March, 1979 was never proved according to law by examination of the witnesses to the Will nor his father and other legal heirs of late Sh.Chanan Ram were impleaded as parties in the suit who would have objected to the execution and genuineness of the Will and also the fact that Sh.Chanan Ram had no right, title or interest in the property in individual capacity to bequeath the suit property or any other property as the property is HUF property of M/s Jatti Ram Chanan Ram.

35. The prayer made in the objections is that the preliminary decree dated 29th September, 2008 and the final order 23rd December, 2009, therefore, be set aside.

36. It is denied by the decree-holder that the entire movable or immovable properties were owned and possessed by M/s Jatti Ram Chanan Ram or they were for the benefit and enjoyment of the entire alleged HUF or no one has any right to deal with or dispose of the properties of alleged HUF. It is submitted that these pleas raised at the stage of execution proceedings are frivolous since this Court will not go behind the decree.

37. There is a force in the submissions of the decree-holder that if the objector has any grievance to the decree passed, then he is entitled to seek appropriate remedy in accordance with law and not through these frivolous objections which are untenable in law. If objector feels that he has any rights, he has to file independent proceedings. Late Sh.Chanan Ram expired in 1980 and even objector's father expired on 20th May, 2001 and still no steps were taken by the said objector.

38. It is not possible to believe that the objector was all through unaware of the present litigation between the decree-holder and the judgment-debtors when the same was hotly contested between the parties and went up to the Supreme Court.

39. It has been specifically denied by the decree-holder that the preliminary decree dated 29th September, 2008 has been obtained through any collusion between the decree-holder and the judgment-debtors. It is also denied that late Sh.Chanan Ram had no individual right, title or interest in the suit property or he could not bequeath the same in view of the property being HUF property as alleged. It is submitted that in the present case, the probate of the Will is not required as the same has already been admitted by the judgment-debtors, acted upon and the Will has already been dealt with in present proceedings by a Civil Court. The decree is passed on the basis of the Will. The Will has not been challenged by the objector. It is not an invalid Will. Such pleas are raised by the objector at the stage of execution and after a lapse of 35 years. The parties are related to each other. The presumption is that they were aware about the Will. The original MOU referred by the judgment-debtors was not produced. The theory has already been rejected by the Division Bench of this Court. The Supreme Court also dismissed the Special Leave Petition filed against the said order. Therefore, it is misconceived to allege that the preliminary decree or the final decree are liable to be set-aside on any ground whatsoever. In case the objector has any grievance, then he can exercise his rights in accordance with law and not by way of objections in the present proceedings. The Will dated 27th March, 1979 in question has already been dealt with in the present proceedings by a Civil Court. All such pleas which are being raised by objector at this stage were dealt by this Court while passing preliminary and final decree, both upheld upto the Supreme Court. The legal heir(s) or any objector, if entitled as per law, to claim his/her right from the share of 50% granted to the judgment-debtors. It appears to the Court that the judgment-debtor No.4, directly or indirectly, has filed the objections with malafide intention in order to delay the enforcement of decree passed by the Court. All the judgments referred by the judgment-debtor No.4 and the objectors are not applicable to the facts of the present case and do not help them in any manner.

40. The present objections are false and frivolous and the same have been filed only to delay the present proceedings. Therefore, the same are dismissed with costs of Rs.20,000/- which shall be deposited by the objector with the Delhi High Court Mediation and Conciliation Centre within two weeks from today. The accompanying application for stay being E.A.(OS) No.729/2014 is also dismissed.

41. Accordingly, all sets of objections and pending application are disposed of.

Ex.P. No.233/2010

42. The prayer made in the execution is allowed. It is directed that Mr.Y.D.Nagar, Advocate is appointed as Local Commissioner in this petition. The Local Commissioner to divide the suit property physically by metes and bounds in terms of the final decree dated 23rd December, 2009 in CS(OS) No.593/2006 in terms of his own report dated 29th October, 2007 filed in the suit for dividing the suit property bearing No.C-18, Mansarovar Garden, New Delhi into two equal halves and allocating one half to the decree-holder and another half to the judgment-debtors and handing over possession of the portion allocated to the decree-holder and portion allocated to the judgment-debtors. The fee of the Local Commissioner is fixed at Rs.1,00,000/- which shall be share by the parties in equal proportions. Parties shall provide full co-operation to the Local Commissioner for execution of the order. If necessary, Local Commissioner is entitled to take the police assistance.

43. List on 5th February, 2016 for awaiting the report of the Local Commissioner.

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