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

+ **FAO 36/2015 and CM No.2315/2015 and 10208/2015**

MUDDI THROUGH HER LEGAL HEIRS Appellant
Through: Mr. Pratik Bhatia, Advocate

versus

JAMILA BEGUM & ORS Respondents
Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **24.09.2015**

1. Vide order dated 20.07.2015, the learned Registrar allowed the impleadment of the legal representatives of the deceased respondent no.2. To be noted, despite service, the legal representatives of respondent no.2 did not appear and thus, the Registrar proceeded to pass the order.

2. The appeal was fixed for hearing today i.e. 24.09.2015. Today, there is neither any representation on behalf of respondent no.1 nor is there any representation on behalf of the legal representatives of respondent no.2, 3 and 4.

2.1 This appeal, however, has been filed by the appellant qua order dated 04.12.2014. By virtue of this order, the trial court dismissed the appellant's application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (in short the CPC).

2.2 Furthermore, the trial court went on to state that a last and final opportunity is granted to the appellant for leading evidence subject to payment of costs of Rs.5,000/-.

2.3 My predecessor vide order dated 13.03.2015 had injuncted respondent

no.1, 3 and 4 from transferring, alienating or parting with the possession of the suit property till the next date of hearing. In addition, in the very same order, the court had also stayed the order of the trial court dated 04.12.2014 to the extent it imposed costs in the sum of Rs.5,000/- on the appellant. This order has continued to date.

2.4 In nutshell, the reason that the trial court dismissed the appellant's application under Order 39 Rule 1 and 2 of the CPC was that on an earlier occasion, the appellant had moved an application for the very same purpose, which was dismissed. A perusal of the record would show that this order was passed by the trial court on 20.09.2014 as sufficient details have not been given with regard to the articulated apprehension that the respondents were attempting to dispose of or part with possession of the suit properties.

2.5 There is also an observation in the very same order to the effect that there is an attempt on the part of the appellant to delay the trial in the matter. Evidently, the suit was filed in 2005 and the application under Order 39 Rule 1 and 2 of the CPC was filed, for the first time, on 07.12.2013. Though the issues were framed on 23.05.2011 and several opportunities had been given to the appellant to lead and conclude her evidence, the appellant had delayed the exercise.

2.6 The impugned order has been passed on the fresh application filed by the appellant under Order 39 Rule 1 and 2 read with Section 151 of the CPC.

3. A perusal of this application would show that there are particulars given in the application which seek to convey the apprehension that third party interest is sought to be created in the suit properties. The trial court in the impugned order has not dealt with the averments made in the application.

3.1 I am further informed by the learned counsel for the appellant that

affidavit of evidence of witnesses cited by the appellant has already been filed. Learned counsel for the appellant says that, presently, the delay is on account of the exercise undertaken by the appellant to bring on record the legal representatives of respondent no.2/defendant no.2, in the trial court.

3.2 The learned counsel for the appellant further submits that the appellant does not have the necessary wherewithal to pay the costs of Rs.5,000/-.

3.3 I am also informed that an application was moved by the appellant for being treated as a pauper, which has been allowed by the trial court.

4. Having regard to the aforesaid circumstances, I am inclined to set aside the impugned order. It is ordered accordingly. The trial court will rehear the application under Order 39 Rule 1 and 2 of the CPC. Pending the decision in the application, the interim protection granted by this court vide order dated 13.03.2015 will continue to operate. The direction imposed for imposition of costs is set aside.

4.1 The appellant is, however, directed to present his witnesses for cross-examination on the next date fixed before the trial court. In case that date is not convenient, then, the trial court will give the date in close proximity on which date the appellant will produce his witnesses for cross-examination. In case there is delay, the trial court will be at liberty to close the evidence of the appellant.

5. With the aforesaid directions in place, the appeal and the pending application are disposed of.

RAJIV SHAKDHER, J

SEPTEMBER 24, 2015

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