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

+ CM(M) 1103/2014

SUBHASH MENDIRATTA ..... Petitioner

Through: Mr.Sunil Malhotra & Mr.Amit  
Sanduja, Advocates

versus

SURESH MENDIRATTA @ SURESH CHANDER ..... Respondent

Through: Mr.Anuj Gupta & Ms.Rashmi Bansal,  
Advocates with respondent in person

**AND**

+ CM(M) 1104/2014

SUSHIL MENDIRATTA ..... Petitioner

Through: Mr.Sunil Malhotra & Mr.Amit  
Sanduja, Advocates

versus

SURESH MENDIRATTA @ SURESH CHANDER ..... Respondent

Through: Mr.Anuj Gupta & Ms.Rashmi Bansal,  
Advocates with respondent in person

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

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**07.09.2015**

CM(M) Nos.1103/2014 & 1104/2014

1. By way of these petitions filed under Article 227 of the Constitution of India, petitioner is impugning the order dated 18<sup>th</sup> October, 2014 passed in Suit Nos.919/13/08 & 920/13/08 by the learned Civil Judge, Central District, Delhi whereby the application filed by the respondent under Order XVIII Rule 1 read with Section 151 CPC was allowed.

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2. Learned counsel for the petitioner has submitted that Suit Nos.919/13/08 & 920/13/08 have been filed by Sh.Suresh Mendiratta, respondent herein claiming ownership in respect of the suit property as son of late Smt.Geeta Devi.

3. The claim made in the suits was contested by the petitioner who was defendant in the above civil Suits by filing written statement.

4. On the pleadings of the parties following issues were framed:-

(i) Whether the plaintiff has under valued the suit and the value of the suit property is beyond the pecuniary jurisdiction of the Court? OPD

(ii) Whether the plaintiff has no cause of action and locus standi to institute the suit? OPD

(iii) Whether Smt.Geeta Devi executed the Will dated 08.02.2008 in favour of Smt.Laxmi Devi, if so, its effect? OPD

(iv) Whether the plaintiff is entitled to decree of mandatory injunction as mentioned in the prayed clause (a) and (c) of the plaint? OPP

(v) Whether the plaintiff is entitled to mesne profits, if so, at what rate and for what period? OPP

(vi) Whether the plaintiff is entitled to decree of permanent injunction as prayed for in prayer clause (c1) of the plaint? OPP

(vii) Relief.

5. The grievance of the petitioner is limited to the extent that while allowing the application under Order XVIII Rule 1 CPC, instead of asking the respondent/plaintiff to prove his case and stand on his own legs petitioner/defendant has been asked to lead DE.

6. During the course of trial learned counsel for the respondent submitted that without prejudice to the rights and contentions raised before

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the learned Trial Court as well before this Court, respondent has no objection if the impugned order dated 18<sup>th</sup> October, 2014 is set aside and the respondent/plaintiff is ready and willing to lead his evidence i.e. plaintiff's evidence first in Suit Nos. 919/13/08 & 920/13/08.

7. In view of the submissions made by the learned counsel for the respondent herein, Mr. Sunil Malhotra, learned counsel for the petitioner submits that these petitions may be disposed of.

8. Since the respondent who is plaintiff in Suit Nos. 919/13/08 & 920/13/08 has prayed that the impugned order be set aside and he is willing to lead evidence first, the impugned order dated 18<sup>th</sup> October, 2014 is set aside with direction to the respondent/plaintiff in Suit Nos. 919/13/08 & 920/13/08 to lead plaintiff's evidence on the issues settled by the learned Trial Court.

9. The petition is disposed of in above terms.

10. No costs.

11. A copy of this order be sent to learned Trial Court for compliance.

12. A copy of this order be also given *dasti* to the learned counsel for the parties.

CM No.20887/2014 in CM(M) Nos.1103/2014  
CM No.20889/2014 in CM(M) Nos.1104/2014

Dismissed.

  
PRATIBHA RANI, J.

SEPTEMBER 07, 2015

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