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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 28th May, 2015

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CM(M) 545/2015

SUBH RAM (THR LRS)

..... Petitioner

Through: Mr. S.S. Panwar, Advocate.

versus

MAN SINGH & ORS

..... Respondents

Through: None.

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CM(M) 551/2015

SUBH RAM (THR LRS)

..... Petitioner

Through: Mr. S.S. Panwar, Advocate.

versus

MAN SINGH & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM Nos. 10421/2015, 10422/2015 and 10423/2015 (Exemption) in CM(M) 545/2015

CM Nos. 10483/2015, 10484/2015 and 10486/2015 (Exemption) in CM(M) 551/2015

Allowed, subject to all just exceptions.

CM(M) 545/2015 and CM No. 10424/2015 (Stay)

CM(M) 551/2015 and CM Nos.10485/2015 (addl. Documents) and 10529/2015 (Stay)

1. A suit being CS No.168/11/92 (New suit No.293/2014) was filed by Man Singh for partition and injunction. Subh Ram was the Defendant No.1

in the suit who died and thus his legal heirs Ved Pal Singh, Shri Pal, Rishipal, Smt. Indra, Smt. Kamlesh and Smt. Raj Rani were impleaded. In the suit vide order dated 3rd December, 1994 an interim injunction application was disposed of thereby restraining the Defendants including the Petitioners herein from raising construction, addition and alternation in the portion shown in yellow colour in the site plan and from transferring, alienating or otherwise parting with the possession of the same till the disposal of the suit.

2. An application under Section 151 CPC was filed by the Petitioners, that is, LRs of late Subh Ram seeking modification of the said injunction order dated 3rd December, 1994 which was dismissed vide order dated 1st February, 2013 which is impugned in CM (M) No.545/2015. Another application filed by the Petitioners, that is, LRs of deceased Subh Ram prayed that the present suit be consolidated with another suit pending trial being CS No.294/2014 instituted by the Petitioners and in order to avoid repetition, the Petitioners want to adopt the evidence as produced by them in Suit No.166/11/95 new number CS No.296/14 as the testimony of witnesses cover the real controversy involved between the parties in the present suit. This application was dismissed vide order dated 21st March, 2015 which is impugned in CM (M) No.551/2015.

3. The Petitioners state that in case the injunction order dated 3rd December, 1994 is not modified and they are not permitted to demolish the existing structure of the property and reconstruct the same will endanger their life and they would be on roads if the property falls down and thus they may be permitted to make material structural changes to give support and strength to the building and renew the same to make it fit for habitation of

the applicants and their family. The suit property is in possession of the Petitioners and besides residential, the same is used for commercial purpose also. Photographs of the suit property were placed on record. Vide the impugned order dated 1st February, 2013 the learned Trial Court held that the evidence in the suit was completed on 19th August, 1998 and thereafter the matter is lingering on one pretext or the other for deciding the miscellaneous applications. From a perusal of the photographs there appears to be no eminent danger of the building falling and if the injunction order is modified at this stage the very purpose of filing of the suit by the Plaintiff/Respondent would be frustrated and the same would result in grave injustice and injury and further delay in proceedings. Thus the application under Section 151 was dismissed with cost of Rs.3,000/-

4. Before this Court learned counsel for the Petitioner re-agitates the same pleas. This Court has also perused the photographs placed on record. Though the structure is old one however, in no way it is dilapidated or on the verge of collapsing. The finding of the learned Trial Court that despite the evidence having been concluded in the year 1998 one after another miscellaneous applications are being filed to prolong the proceedings cannot be said to be without any basis and I find no reason to interfere in the said order.

5. As regards the order dated 21st March, 2015, impugned in CM (M) No.551/2015 the learned Trial Court noted that the present suit was for partition wherein the Plaintiffs had sought preliminary decree and partition in respect of Gher/Gitwar measuring 1 Bigha comprised I Khasra No.173 min situated in Village Lado Sarai whereas in Suit No.296/14 permanent injunction has been sought from raising any construction on the property F-

118 measuring 260 sq. yards at Village Lado Sarai. The issues framed in the two suits are entirely different and thus different evidence would have to be led on the basis of the pleadings in the two suits. Further one such similar application was withdrawn by the Petitioner vide order dated 19th February, 2014.

6. The main plea of learned counsel for the Petitioner before this Court is that the Petitioners be permitted to adopt the evidence led by them in CS No.296/2014 in the present suit, that is, Suit No.293/2014 and the cross-examination be also restricted to the cross-examination already done and not beyond thereto. As noted by the learned Trial Court the prayers in the two suits are different and thus the pleadings are also different. The issues framed in the two suits are different and hence no order can be passed permitting the parties to adopt the evidence in Suit No.296/2014 and also restricting the right of cross-examination. The prayer made in the application deserves to be rejected outright. I find no error in the impugned orders.

7. Petitions and applications are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

MAY 28, 2015
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