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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 513/2012 & C.M. No.7783/2012**
YOGESH KHANNA

..... Petitioner
Through Mr.Arun Monga and Ms.Kaurat
Sandhu, Advocates.

versus

NARAYAN KRISHAN AKERS & OTHERS

..... Respondent
Through Mr.R.K.Chawla, Advocate for R-1.
Mr.Jitender Kumar, Advocate for R-2
to R-5.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **18.02.2016**

Order impugned before this Court is the order dated 29.3.2012. The prayer made by the petitioner (defendant in the Trial court) seeks permission of the Court to place on record 11 documents (details of which find mention in the impugned order); this was declined by the Trial Court and rightly so.

The present suit is a suit for partition which has been filed by Narayan Krishan Akers (step-brother of the applicant/defendant no.1/Yogesh Khanna). The plaintiff is the son of P.N.Gupta. Defendant no.1 is the step-daughter of P.N.Gupta and the natural born daughter of Kuldip Kaur. The subject matter of the suit was property at 55, Uday park, New Delhi which was jointly owned by Kuldip

Kaur and P.N.Gupta and after his death it was transferred to the name of his wife Smt. Kuldip Kaur. Contention of the petitioner/defendant in the Trial Court is that this property had been willed to her.

It was at the stage of the evidence of the plaintiff that this application was filed. This was on 26.5.2010. The averments made in the application are to the effect that the applicant's mother namely Kuldip Kaur had executed a Will in her favour; this was out of natural love and affection for the petitioner who was her daughter. Her mother Kuldip Kaur had married P.N.Gupta and the relationship of the applicant (Yogesh Khanna) with her father and her mother was cordial. They both had a natural love and affection for her. Due to inadvertence these documents could not be filed earlier. These are letters written by step-father of the applicant (P.N.Gupta) to the applicant Yogesh Khanna and to her husband which would indicate this love and affection which P.N.Gupta (her step-father) had with her. These letters were found by the applicant/only when she had gone to search her house Jalandhar at December, 2006; which was after the death of her husband. Prayer was accordingly made to file these documents.

Reply was filed opposing the application.

Before this Court it is pointed out by the learned counsel for the respondent (plaintiff in the Trial court) that the impugned order suffers from no infirmity. Relevancy of these documents has not been detailed. Otherwise also this application has been filed belatedly.

Attention has been drawn to the defence of the petitioner/defendant in the Trial court.

The defence taken by the petitioner/defendant in the written statement is that Kuldip Kaur had executed her last will dated 29.01.1996 in favour of Yokes Khanna. The written statement does not speak of special love or affection that Smt.Kuldip Kaur or P.N. Gupta had with Smt.Yogesh Khanna. It speaks of a will dated 29.01.1996 by virtue of which Yogesh Khanna is stated to have acquired interest in this property. There is also no mention of any oral settlement between the parties.

Affidavit by way of evidence (05.04.2010) was filed by the defendant in the Trial Court. Learned counsel for the plaintiff informs this Court that the averments made in this affidavit are beyond the pleadings and this affidavit speaks of an oral settlement and a mutual love and affection of Kuldip Kaur in favour of Yogesh Khanna which was not the defence taken in the written statement.

This submission of the learned counsel for the plaintiff/respondent is correct. There is no mention in the written statement of any mutual love or affection that Kuldip Kaur or P.N. Gupta had in favour of Yogesh Khanna or of any oral family settlement.

It has also been brought to the notice of this Court that this affidavit was objected to by the learned counsel for the plaintiff pursuant to which the present application was filed on 26.5.2010

which was only to fill in this lacunae. This Court also notes that even in the application filed by the petitioner/defendant (under Order VIII Rule 1A) a submission had been made qua the first five documents. There is no averment qua document nos. (vi) to (xi). Qua the first five documents, it has been stated that these documents could not be filed prior in time as it was only in December, 2006 when the petitioner had gone to Jalandhar and after search of her house she recovered these documents. This was in the year 2006. What is their relevancy has not been disclosed. That apart, if these documents came to the knowledge of the defendant/petitioner in December, 2006 why she waited up to 2010 to file the present application has not been answered. The relevancy of the documents at serial nos.6 to 11 has not been detailed.

These documents have been filed belatedly, the impugned order has rightly rejected the application. Impugned order calls for no interference. Petition is without any merit; it is dismissed with cost of Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 18, 2016
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