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

*Date of Decision: August 17, 2016*

+ **FAO 176/2016 & C.M.No.15169/2016**

RAMPATI ..... Appellant

Through: Mr. Nirmal Kumar Ambastha and  
Ms. Ashmita Bisarya, Advocates

versus

RAMPYARI & ORS ..... Respondents

Through: Mr. D. Bhattacharya, Advocate for  
respondent No.1  
Mr. Arun Kumar Dhawan and Ms.  
Aastha Dhawan, Advocates for  
respondents No.2 and 3

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**(ORAL)**

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In suit for partition and permanent injunction, appellant's application for stay has been dismissed by trial court by observing that appellant is not in possession of the back portion of the suit property, as claimed and concludes that appellant has not been able to make out a case for entitlement to any interim injunction

At the hearing, learned counsel for appellant contends that the stand of appellant of her coming to know in December, 2015 from neighbours about the respondents-defendants trying to transfer the suit property and are raising some construction of which photographs are appended to the plaint, has not been considered by the trial court in the

impugned order and it is further submitted that if the respondents-defendants are permitted to alienate the suit property, then appellant's suit would be rendered infructuous and, so impugned order deserves to be set aside.

On the other hand, learned counsel for respondents submit that the appellant's suit is not maintainable as the appellant has not paid the requisite court fee and appellant has approached the court belatedly after three decades and was well aware of the oral family settlement and the share which fell to the appellant has been already given in the oral family settlement to the appellant and, so application for stay has been rightly dismissed by the trial court.

Upon hearing both the sides and on perusal of impugned order and the material on record, I find that the aspect of oral family settlement is very much in dispute and it cannot be said that the instant suit has been filed after three decades because it is the positive case of appellant that in December, 2015 when some construction work had been started in the suit property, she had come to know about the intention of the respondents to alienate the suit property.

Impugned order, so far as it holds that the appellant is not in possession of the suit property, cannot be faulted with, but trial court in the impugned order has given no reason to decline the stay application *in toto*, particularly when there are specific averments that respondents are in the process of alienating the suit property or are making changes in the suit property. This aspect has not been considered in the impugned order. Though, it has been rightly noted by the trial court in the impugned order that if there is any danger of the suit property being damaged, alienated or

wrongfully sold, then interim injunction ought to be granted, but trial court has failed to take notice of the afore-referred averments of the appellant-plaintiff, nor the trial court has found that the apprehension of appellant-plaintiff is misplaced.

Trial court is well aware of the legal principles governing the grant of interim injunction, as it is noted in the impugned order that the truthfulness or the falsity of the allegations made by the parties cannot be considered at the initial stage, but trial court fails to grant the necessary interim injunction. To preserve the suit property, it is essential to direct the respondents to maintain *status quo* as on 27<sup>th</sup> April, 2016 on which date, interim orders were passed in this appeal.

In the facts and circumstances of this case, impugned order is modified to the extent of partly allowing the appellant's application for interim relief by directing that *status quo* as on 27<sup>th</sup> April, 2016 be maintained by the respondents during the pendency of the suit. However, there is a rider to it. The rider is that appellant is required to pay the requisite court fee as per their share claimed in the suit property.

This appeal and the application are disposed of while making the interim order of 27<sup>th</sup> April, 2016 absolute. In case the appellant does not deposit the requisite court fee within four weeks from today, then by recourse to Order VII Rule 11 (b) of CPC, appellant's plaint be not proceeded with.

**(SUNIL GAUR)**  
**JUDGE**

**AUGUST 17, 2016**

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