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

+ CM(M) 649/2016

VIKAS JAIN

..... Petitioner

Through Mr. Prabhat Kumar Rai, Advocate
with petitioner-in-person.

versus

M/S BRIJWASI INFRATECH PVT LTD & ORS..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **12.07.2016**

CM No.24129/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 649/2016 and CM No. 24128/2016 (directions)

By the present petition, the petitioner seeks to impugn the order of the Trial Court dated 08.04.2015.

By the impugned order the Trial Court dismissed the application of the petitioner under Section 44 of the Transfer of Property Act. It was the contention of the petitioner that he had filed a suit for declaration and permanent injunction with respect to Joint Hindu Family property No. AS-1/3, Krishna Nagar, Delhi-51. Shri. Tej Kumar Jain, father of the petitioner is said to have executed a registered will dated 08.04.2008 and the petitioner states that he has filed a probate petition which was instituted in 2009. It is

further averred that respondents No. 2 to 5 have illegally sold their share in the suit property to respondent No.1 who states that he is in possession of a portion of the property. Hence, based on these averments, it was prayed that respondent No.1 be directed to vacate the premises as it is a joint family property. Other connected reliefs were also sought.

The Trial Court by the impugned order has noted that the suit property has lost the status of a joint family property and hence, it cannot be said to be a single dwelling house. It also noted that possession has been given to defendant No.1 when he had purchased the undivided share and as such, the property has lost its character of single dwelling unit as joint family property.

Learned counsel for the petitioner has submitted that apart from the fact that respondent No.1 has illegally entered into the suit property, which he could not in view of Section 44 of the Transfer of property Act, there are observations in the impugned order which would prejudice the petitioner when the matter is taken up for final disposal. It may also cause prejudice to the petitioner in the other pending proceedings.

A perusal of the impugned order would clearly show that respondent No.1 had made the purchase by a deed on 29.10.2010. This application is filed in 2015. Further the petitioner contends that the possession of respondent No.1 is itself in dispute. These are the issues which would have to be decided in the course of trial. It is not possible to pass interim orders in favour of the petitioner as has been sought in the application under Section 44 of the Transfer of Property Act.

I see no infirmity in the impugned order. However, needless to add that the observations made in the impugned order are necessarily prima facie

for the purpose of disposal of the application and would not bind the parties in the course of the final adjudication of the pending matters between the parties.

With the above observations, the petition stands dismissed.

JAYANT NATH, J

JULY 12, 2016
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