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

+ CM(M) 689/2016 & CM Nos.25508-25510/2016

AZAJ & ORS

Through Mr.Moni Cinmoy and Ms.Shilpa,
Advs.

..... Petitioner

versus

SULTAN KHAN & ORS

Through None.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **20.07.2016**

1. By the present petition the petitioner seeks to impugn the order of the trial Court dated 28.4.2016 whereby the trial Court had after hearing arguments on the preliminary issue Nos.4,6,7,8 and 9 held that the issues cannot be decided, at this stage, and would be decided at the final stage after leading of evidence by the parties.

2. Respondents have filed the present suit for declaration, cancellation of documents and permanent injunction. The suit property is House No.Q-28 situated at Batla House, Jamia Nagar, Okhla, New Delhi. The bone of contention between the parties is certain title documents executed by the late mother of the petitioner in favour of the petitioner as per which it is the contention of the petitioner he became absolute owner of the suit property. The documents relied upon by the petitioner to claim title are the registered GPA and Will both dated 7.12.2009.

3. It was the contention of the petitioner that there is an admission in the plaint that the petitioner has obtained possession of the suit property though

it is claimed in the plaint that the same was done fraudulently. He submits that accordingly a relief is sought in the plaint for possession of the suit property though it is worded as relief of permanent injunction. Further, the suit has been valued for the purpose of Court Fee and jurisdiction for the relief of declaration at Rs.2,000/- and for the relief of permanent injunction at Rs.2,000. Whereas the prayer actually seeks possession of the suit property and hence the respondents were obliged to value the plaint based on the market value of the suit property and pay ad valorem court fee on the same.

4. Learned counsel appearing for the petitioner has vehemently argued that in the light of the admission in the plaint there are no disputed questions of fact. He submits that the impugned order has the effect of nullifying the admission made by the respondent in favour of the petitioner regarding possession of the suit. Hence, it is urged that the trial court has erroneously deferred decision on the preliminary issues and the impugned order be set aside.

5. A perusal of the impugned order shows that the trial Court has come to a conclusion that the issue as to whether respondents are in possession of the property or not is a matter of trial which cannot be decided at the preliminary stage treating such issues as preliminary issues. In view of this conclusion, the trial court has left the issues open to be decided after leading evidence by the parties.

6. Further, a perusal of the issues/additional issues framed by the trial Court shows that one of the issues relates to valuation of the suit for the purpose of jurisdiction and court fees. Issue has also been framed as to whether the suit is undervalued. Hence, the trial Court has by the impugned

order only deferred adjudication on these issues after the evidence has been completed.

7. In my opinion, there is no infirmity in the impugned order as to justify interference by this Court under Article 227 of the Constitution of India. The observations made by the trial court in the impugned order dated 28.4.2016 are necessarily prima facie for the purpose of taking a decision whether the preliminary issues be adjudicated upon at this stage without leading evidence. Hence, the submissions of learned counsel for the petitioner cannot be accepted.

8. With the above observations the present petition stands dismissed. All pending applications also stand disposed of accordingly.

JAYANT NATH, J

JULY 20, 2016

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