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

+ CM(M) 407/2015

SANJEEV CHODHA

..... Petitioner

Through

Mr.Rajesh Gupta, Mr.Harpreet Singh
& Mr.Pranjal Saran, Advocates

versus

VIPIN KUMAR & ANR

..... Respondents

Through

Mr.V.K.Mishra, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

29.07.2016

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1. By the present petition, the petitioner seeks to impugn the order dated 11.02.2015 by which the learned trial court dismissed the application filed by the petitioner under Order 1 Rule 10 CPC.
2. The present suit was filed for partition and permanent injunction of the property bearing No.1228, Dr.Mukherjee Nagar, Delhi by the plaintiff/respondent No.1. His mother, defendant No.1 and his brothers, defendants No.2 to 4 were impleaded as defendants.
3. By order dated 30.11.1995, a preliminary decree was passed declaring the respondents and the mother of the respondents as having 1/5 share each in the suit property. The mother of the respondent died on or around 1997.
4. In the meantime, after passing of the preliminary decree, the mother as per the petitioner said to have transferred her share in the suit property on 07.02.1996 in favour of one Sh. Gulshan Kumar. Subsequently, the said

Gulshan Kumar is said to have transferred his rights in the suit property in favour of the petitioner on 14.01.2000 by registered documents. The petitioner is the wife of respondent No.1. Hence, it is the contention of the petitioner that she steps into the shoes of the mother and her share is 1/5th share in the suit property.

5. Subsequently, respondents No.2 to 4 filed an application under Section 151 CPC that the preliminary decree passed by the court on 30.11.1995 be modified holding that the surviving parties to the suit are entitled to 1/4th share each in the suit property. The application was opposed by respondent No.1 claiming that the petitioner his wife had succeeded to the rights of the mother and now is entitled to be impleaded as a party to the present suit. The trial court rejected the contention of respondent No.1 holding whether the wife of the plaintiff has an independent right cannot be decided in these proceedings as the wife/the petitioner is not a party to the present proceeding. Accordingly, the application of respondents No.2 to 4 was allowed and the share of the parties is modified each of the respondents having 1/4th share in the suit property.

6. Thereafter, the petitioner Smt. Sanjeev Chodha has filed an application under Order I Rule 10 CPC for being impleaded as party to the suit. By the impugned order dated 11.02.2015, the trial court dismissed this application noting that the mother Smt. Prakashwanti had 1/5th share in the suit property which amounts to 32 sq.yds., hence she had no right to sell a portion measuring 80 sq.yds. The trial court further held that the issues which would arise in connection with the alleged sale of the particular portion do not arise in the suit and therefore, the presence of the applicant in the suit is not necessary to effectively decide all issues in the suit. The

application is accordingly dismissed.

7. The learned counsel appearing for the petitioner has submitted that the petitioner has become the owner of 1/5th share in the suit property by means of the registered title documents and now is entitled to 1/5th share in the suit property. It is urged that under Order XXII Rule 10 CPC the petitioner has been assigned rights by the deceased mother and is entitled to step into the shoes of the mother as a party to the suit.

8. The learned counsel appearing for the respondents has opposed the present petition stating that the original alleged sale that took place between the mother in favour of one Sh.Gulshan Kumar comprised only of power of attorney and agreement to sell etc. He submits that the mother having died sometime in 1997, the sale effected in 2004 utilising power of attorney issued by her is clearly illegal inasmuch the power of attorney ceased to operate after the death of the mother.

9. A perusal of the order shows that the trial court ignored the contention of the petitioner that she has stepped into the shoes of the deceased mother. Merely, because the title documents state that a portion measuring 80 sq.yds was sold to the petitioner whereas the share of the mother was only 32 sq.yds would not deprive the petitioner of her alleged title to the property. The claim of the petitioner regarding title would have to be decided upon by the trial court and appropriate steps be taken, keeping in mind the provisions of Order XXII Rule 10 CPC.

10. With the above observations, the impugned order dated 11.02.2015 is quashed.

11. The trial court is requested to hear the matter afresh and dispose of the application under Order I Rule 10 CPC filed by the petitioner in accordance

with law. Any observation made in the present order would not in any manner influence the outcome of the said adjudication carried out by the trial court. The petition stands disposed of in view of the above.

JAYANT NATH, J.

JULY 29, 2016/v