

\$~28

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 689/2015 & C.M. No.13444/2015

KAMLESH KUMARI & ANR

..... Petitioners

Through

Mr.Ravi Gupta, Sr. Adv. with Mr.Ankit Jain, Mr.Sachin Jain and Ms.Bhoomika Verma, Advocates.

versus

ROHTAS GOYAL

..... Respondent

Through

Mr.Dinesh Kumar Gupta and Mr.Vidit Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

15.01.2016

The impugned order dated 04.02.2015 vide which issue no.3 (which herein reads as under) “Whether the suit is not maintainable in the present form? OPD” was treated as a preliminary issue; the petitioner/defendant is aggrieved by this order.

Under Order XIV Rule 2 of the CPC the Court may frame a preliminary issue; however, it should not be a mixed question of law and fact.

Pleadings of the parties suggest that the impugned calls no interference.

The present suit is a suit for permanent injunction seeking a prayer in favour of the plaintiff and against the defendant restraining the defendant from handing over the documents contained in the locker in

question to anyone else other than plaintiff/misusing them.

In the written statement filed by the defendant in para 7 of his preliminary objection he has categorically stated that he has no objection to the handing over the keys of the locker of the plaintiff or the documents as and when an order is passed by the Competent Court.

The record in fact disclose that the defendant is the brother of deceased Shyam Sunder Goyal. Plaintiffs in the Trial Court are the alleged wife and son of the deceased Shyam Sundar Goyal. There is another lady namely Sandhya Devi who is claiming title in her capacity as wife of the deceased. She had filed an application under Order 1 Rule 10 of the CPC in the suit pending in the Trial Court. The same had been dismissed. The defendant brother has a neutral stand. He was appointed as the nominee of the locker; that is why key of the locker in question had been handed over to him which is presently now with the bank.

In view of the pleadings which are contained in the plaint and the written statement of the defendant the Court had rightly noted that the preliminary issue as to whether the suit is maintainable, in the background of the pleadings be framed.

Impugned order calls for no interference. Petition is without any merit. Dismissed with costs of Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 15, 2016

ndn