

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1239/2015 & C.M. No.31033/2015**
VIJENDER KUMAR SINGHAL

..... Petitioner

Through Mr. Hari Kishan, Adv.

versus

ASHOK GUPTA & ORS

..... Respondents

Through Mr. Ashok Kumar Garg and Ms.
Kavita Aggarwal, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **22.04.2016**

Reply has not been filed. Learned counsel for the respondent states that she does not wish to file any reply. Record shows that the present suit is a suit for partition; parties are closely related. They are siblings. Record shows that the issues were framed on 07.09.2012. Evidence of the plaintiff stood closed on 20.02.2015. Matter was thereafter transferred from one Court to another. On 15.07.2015 which was the first date before the transferee Court, no witness of the defendant was present. On 14.09.2015 (next adjourned date), Ankur Gupta, the son of the defendant appeared and sought an adjournment on the ground that the father of the counsel for the defendant had expired. The impugned order was passed on the next date i.e. on 10.11.2015.

Learned counsel for the petitioner/defendant submits that a valuable right of the petitioner would be lost in case he is not allowed

to defend his case; he seeks permission of the Court to examine only one witness i.e. Ankur Gupta. The defendant is stated to be unwell and his son Ankur Gupta will depose on behalf of his father as his attorney.

Noting the above submissions of the learned counsel for the petitioner as also the nature of litigation being a litigation between two close family members, this Court is of the view that the impugned order is liable to be set aside and accordingly one more last opportunity is granted to the petitioner/defendant to produce Ankur Gupta as a witness. This Court has been informed that the affidavit by way of evidence of Ankur Gupta (son of the defendant) has already been filed. Parties shall appear before the Trial Court where the Trial Court will give only one adjournment for the purpose of cross-examination of Ankur Gupta as neither party has been able to inform this Court about the next date fixed in the Trial Court. This order is passed subject to payment of costs of Rs.10,000/-.

Petition disposed of.

INDERMEET KAUR, J

APRIL 22, 2016

A