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

+ CM(M) 38/2017 & CM Nos.1271/2017 -1273/2017

INDU KHURANA

..... Petitioner

Through Mr.Bhagat Singh and Ms.Inderjeet
Sidhu, Advocates

versus

SATISH KHURANA & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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13.01.2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 25.11.2016 by which an application under Order 12 Rule 6 CPC was dismissed holding that the court is not inclined to exercise the discretionary power as the application has been filed at the stage of plaintiff's evidence.

2. The plaintiff/petitioner has filed a suit for partition, injunction and declaration of property No.10/16, East Patel Nagar, New Delhi. The said property was owned by father of the parties late Shri T.L.Khurana who expired on 2.8.1977. He is said to have left behind an unregistered will dated 11.6.1968 whereby he bequeathed the suit property to his wife Smt.Uttam Devi. In accordance with the will of the father Smt.Uttam Devi who is mother of the parties merely had a life estate in the property. After

her death the property was to devolve on defendants No.1 and 2.

3. It is the case of the petitioner that as per the Will after Smt.Uttam Devi applied for mutation of the suit property all legal heirs of late Shri T.L.Khurana i.e. the parties herein submitted their affidavits dated 21.3.1978 accepting the Will dated 11.6.1968. The property was hence mutated in the name of Smt.Uttam Devi. A fresh lease deed is also said to have been registered and executed in favour of Smt.Uttam Devi on 16.2.1983. Based on the said registered lease deed it has been urged by the petitioner that on the death of Smt.Uttam Devi the parties became equal owners of the suit property. The defendants No.1 and 2 in the suit, however, claim title to the property based on the will of Shri T.L.Khurana.

4. In the light of these facts the alleged admission claimed by the petitioner is that subsequent to the execution of the lease deed in favour of Smt.Uttam Devi, she became the absolute owner of the property and hence as she died intestate the property devolved in favour of her children in equal shares being undivided share. This is a simple issue based on which a decree under Order 12 Rule 6 CPC is being claimed.

5. In my opinion, merely because the issues have been framed on 3.9.2016 and the matter was fixed for the evidence of the parties on 25.11.2016 it would not mean that the application under Order 12 Rule 6 CPC should be dismissed outright on the ground that the matter is at the stage of plaintiff's evidence. Order 12 Rule 6 CPC gives wide powers. It permits passing of a decree at any stage of the suit either on the application of any party or on its own motion and without waiting for determination of any other question between the parties. Hence mere commencement of evidence cannot be sufficient ground to decline hearing of an application

under Order 6 Rule 12 CPC. This order causes grave prejudice to the petitioners.

6. I may note that the impugned order dated 25.11.2016 was passed without having issued notice to the respondents. Even otherwise, advance copy of the present petition has been sent to the respondent. None is present on their behalf.

7. Accordingly, I allow the present petition and set aside the impugned order dated 25.11.2016. The application under Order 12 Rule 6 CPC filed by the petitioner is restored to its original position. The trial court may adjudicate upon the same as per law uninfluenced by any observations made in the present order. I may also add that pendency of this application shall not be a ground for the parties to take adjournment on the dates when it is fixed for evidence. The trial court may expeditiously dispose of the application.

8. Petition and all pending applications stands disposed of.

JAYANT NATH, J

JANUARY 13, 2017

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