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

+ **CM(M) 675/2017**

S LAHORA SINGH (DECEASED) THR LRS Petitioner

Through: Mr. J.P. Sengh, Sr. Adv. with Mr.
M.K. Gautam, Adv.

Versus

S MAHINDER SINGH AND ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.07.2017**

CM No.23421/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 675/2017 & CM No.23420/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 1st May, 2017 of the Additional District Judge (ADJ) of refusal of adjournment sought by the petitioners / defendants and posting the suit for final hearing on 11th July, 2017.
4. The respondents / plaintiffs have instituted the suit from which this petition arises for partition of immovable property belonging to the father of the petitioners / defendants and the respondents / plaintiffs. The defence of the petitioners / defendants is of the father having left a Will bequeathing the property exclusively to the petitioners/defendants.

5. The petitioners / defendants applied for probate of the said Will set up by the petitioners / defendants and which probate petition has been dismissed and against which dismissal, an appeal is pending before this Court and in which there is no stay of the order of dismissal.
6. The petitioners / defendants sought adjournment of final arguments in the suit awaiting the outcome of the appeal and which has been disallowed.
7. I do not see any error in the impugned order. Once the probate petition, order wherein is a judgment *in rem*, has been dismissed and the interim stay sought by the petitioners / defendants in the appeal preferred thereagainst has been declined / not pressed, the suit filed by the respondents / plaintiffs for partition of the property on the premise of the parties having succeeded to the property in terms of the law of succession cannot be kept pending awaiting the outcome of the appeal.
8. Dismissed.

RAJIV SAHAI ENDLAW, J

JULY 10, 2017
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