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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 939/2017 & CM No.31337/2017 (for stay).
SUBHASH CHANDER SACHDEVA Petitioner
Through: Mr. S.C. Singhal, Adv.

versus

JAGDISH KUMAR & ORS Respondents
Through: Mr. Sunil Kr. Jha and Mr. Amrendra
Kr. Choubey, Advs. for R-1&2.
Mr. Srinivas Vishven, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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31.10.2017

1. This order is in continuation of earlier order dated 29th August, 2017.
2. Both respondents no.1&2 are reported to be served and their counsel appears.
3. Though to a petition under Article 227 of the Constitution of India, no reply is required but a reply has been filed by the counsel for the respondents no.1&2 and is on record.
4. During the hearing, I have enquired about the issues framed in the suit from which this petition arises.
5. Neither has the order framing the issues been filed nor is either counsel carrying a copy of the said order.
6. The counsel for the petitioner / plaintiff however draws attention to page 42 of the reply filed by the respondents no.1&2 and states that one of the issues in the suit is as under:-

“Issue No.5

Whether the Defendant No.1 is the owner of the suit property and he obtained the suit property by way of Family Settlement? OPD”

7. It thus appears that notwithstanding the plea of the petitioner / plaintiff, as recorded in the earlier order dated 29th August, 2017, of the claim of the respondent / defendant no.1 of ownership of property, being *res judicata* in view of the earlier litigation, an issue on claim of ownership by the respondent / defendant no.1 has been framed in the suit from which this petition arises. If the issue is there, then recording of evidence thereon cannot be prevented.

8. The counsel for the petitioner / plaintiff states that he has filed an application under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (CPC) for deletion of the said issue on the ground of the same being barred by *res judicata* and which application is pending consideration.

9. In the aforesaid state of affairs, it is felt that this Court need not interfere at this stage and the petitioner / plaintiff should first address the Suit Court on deletion of the aforesaid issue. Needless to state that if the petitioner / plaintiff succeeds in the said application, the occasion for the respondents / defendants no.1&2 to lead evidence in the suit qua ownership would not arise and the order dated 7th July, 2017 in the suit impugned in this petition would automatically have to be reconsidered; else, if the petitioner / plaintiff fails in the attempt to have the said issue deleted, the evidence on ownership will have to be led in the suit.

10. The counsel for the petitioner / plaintiff of course contends that the documents on which additional evidence has been permitted on 7th July, 2017 to be led, are with respect to a different property.

11. The counsel for the respondents no.1&2 controverts.

12. The counsel for the respondents no.1&2 would also be entitled to

address on the said aspect while addressing on the application under Order XIV Rule 5 of the CPC supra.

13. This petition is disposed of with liberty to the petitioner / plaintiff to press the application under Order XIV Rule 5 of the CPC stated to be pending before the Suit Court and with liberty to the petitioner / plaintiff to, if remains aggrieved, approach this Court again.

14. No costs.

15. The counsel for the petitioner / plaintiff states that the suit is pending since the year 1999.

16. I am sure that the learned Civil Judge will deal with the suit in accordance with the directions of the National Court Management Systems Committee of the Supreme Court and the State Court Management Systems Committee of this Court.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 31, 2017

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