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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. No.206/2017, CM No.34532/2017 (for stay) and CM No.34679/2017 (under Section 151 CPC).

VARINDER KAUR BAKSHI Petitioner
Through: Ms. Sanya Kapur and Mr. Sagar Aggawal, Advs.

versus

AMARJEET KAUR & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.09.2017

CM No.34531/2017 (for exemption) and CM No.34533/2017 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

C.R.P. No.206/2017, CM No.34532/2017 (for stay) and CM No.34679/2017 (under Section 151 CPC).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 18th July, 2017 in CivDJ/611524/2016 of the Court of Additional District Judge-05 (West), Tis Hazari Courts, Delhi) of dismissal of the application under Order 1 Rule 10 of the CPC filed by the petitioner for impleadment in the suit filed by the respondents no.1&2 being the daughters of late Shri Tarlochan Singh Bakshi against the respondents no.3,4&5 being the son, widow and another daughter of Tarlochan Singh Bakshi, for partition of a house belonging to Tarlochan Singh Bakshi contending Tarlochan Singh Bakshi to have died intestate.

4. The petitioner is the wife of the respondent no.3 being the son of Tarlochan Singh Bakshi and sought impleadment in the suit for partition contending that Tarlochan Singh Bakshi has left a Will bequeathing the said house to her and that the said Will is in the custody of the respondent no.4 being the widow of Tarlochan Singh Bakshi.

5. The respondent no.4 (widow of Tarlochan Singh Bakshi) denied having custody of any such Will.

6. Holding, that without the petitioner producing a copy of the Will and there being nothing else to show the existence of the Will, the petitioner was not a necessary or proper party to the suit for partition, the application has been dismissed.

7. The counsel for the petitioner has commenced her arguments by contending that the petitioner has not been given a 'fair hearing'. However, after she has been given sufficient time to argue, she continues to argue that all that the petitioner desires is a 'fair hearing'. It appears that what is meant by 'fair hearing' is allowing impleadment in the suit and a right to contest the suit.

8. A person, merely for being given a 'fair hearing', cannot be impleaded as party to the suit without showing a semblance of being a necessary or property party. Though the counsel for the petitioner states that the petitioner, along with this petition has filed affidavit of one of the attesting witnesses to the Will, but when I enquired from the counsel for the petitioner whether in the absence of any document, the Will can be proved in law, the counsel has no answer.

9. The intent of the petitioner in making the application is quite evident. The petitioner and her husband do not want the suit for partition to be disposed of expeditiously and which may result in their dispossession from the house. Applications filed with such motives deserve to be nipped at the threshold only.

10. There is no merit in the petition.

11. Dismissed.

12. No costs.

13. I may also record that a petition under Section 115 is misconceived inasmuch as even if the order impugned had been in favour of the petitioner, the same would not have put an end to the suit from which this petition arises.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 20, 2017

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