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

+ CM(M) 1088/2017

HARMOHAN KAUR

..... Petitioner

Through: Ms. Sonam Anand and Ms. Radhika
Pahadia, Advs.

Versus

SUKHVINDER PAL SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.09.2017

CM No.35572/2017 (for exemption)

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

CM(M) 1088/2017

3. This petition under Article 227 of the Constitution of India impugns the order [dated 23rd February, 2017 in CS No.13204/2016 of the Court of Additional District Judge (ADJ)-15, Central District, Tis Hazari Courts, Delhi] allowing the application filed by the respondent/plaintiff for review of the order dated 1st December, 2015 dismissing the application of the respondent/plaintiff for filing additional documents and axiomatically allowing the application for filing additional documents.

CM(M) 1088/2017

Page 1 of 4

4. The petition has been preferred after seven months from the date of the impugned order. The learned ADJ, after so allowing the application of respondent / plaintiff for filing additional documents, had posted the suit on 28th January, 2016 for arguments on the application under Section 10 of the Code of Civil Procedure, 1908 (CPC).

5. The counsel for the petitioner/defendant states that the application under Section 10 of CPC is still pending. The counsel is however unable to state the proceedings in the suit after 23rd February, 2017.

6. I may also notice that though besides the petitioner/defendant, her children are also defendants in the suit but they have neither been impleaded as petitioners nor as respondents in this petition. The counsel for the petitioner/defendant states that the same is a mistake.

7. The respondent/plaintiff has instituted the suit, from which this petition arises, *inter alia* for recovery of possession of immoveable property on the basis of title. The petitioner/defendant is the widow of the brother of the respondent/plaintiff. .

8. The counsel for the petitioner/defendant has argued that the defence of the petitioner/defendant and her children is that the property was owned by her father-in-law and the sale deed by the father-in-law claimed by the respondent/plaintiff in his favour of the portion in possession of the petitioner/defendant is bad.

9. On enquiry, as to why the sale deed is bad, the counsel states, “because the property is ancestral”.

10. In spite of the Supreme Court as far back as in *Commissioner of Wealth Tax, Kanpur Vs. Chander Sen* (1986) 3 SCC 567 and this Court at least in a dozen judgments in last two years clarifying the position, it is unfortunate that counsels continue to raise the plea of ancestral property, without even appreciating the legal consequence thereof. After coming into force of the Hindu Succession Act, 1956, the inheritance of the property by a male Hindu from his father is in his personal individual capacity, unless a case is brought under Section 6 of the Hindu Succession Act. Merely by stating that the property is ancestral, the case does not come under Section 6 of the Hindu Succession Act.

11. Be that as it may, the respondent/plaintiff only wants to file two additional documents, one of which is a certified copy of the original sale deed in favour of the respondent/plaintiff which he wants to take back and the counsel for the petitioner/defendant states that she has no objection thereto. The other document is a sale deed by the father-in-law of the petitioner/defendant in favour of the husband of the petitioner/defendant.

12. The counsel for the petitioner/defendant states that the said sale deed has not even been pleaded in the plaint or the replication.

13. However, on enquiry as to the issues framed in the suit, the counsel has again neither filed the copy of the order framing the issues nor has the said copy with her today.

14. In a petition preferred in such a manner, the challenge cannot be appreciated and the only inference is that the petitioner is not serious about the challenge.

15. The counsel for the petitioner/defendant, on enquiry, states that evidence in the suit is over but evidence on the counter-claim is to be recorded.

16. Though ordinarily evidence in the suit and the counter-claim should be recorded together and it is not understandable how the two have been segregated but once the evidence in the counter-claim has not even begun, it cannot be said that the petitioner/defendant will suffer any prejudice from the impugned order or that the petitioner/defendant will not have proper opportunity to rebut the sale deed.

17. There is no merit in the petition.

18. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 26, 2017

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