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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1106/2017
MOHD AFAQ SIDDIQI Petitioner

Through: Mr. J.H. Jafri, Adv.

Versus

RASHEEDA SIDDIQI & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.10.2017**

CM Nos.36121-22/2017 (both for exemptions)

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

CM(M) 1106/2017 & CM No.36120/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 14th September, 2017 in Suit No.207902/2016 (Old CS No.7902/2016) of the Court of Additional District Judge (ADJ)-06, South-East District, Saket Courts, New Delhi] of dismissal of an application filed by the petitioner under Order I Rule 10 of the CPC for impleadment as a defendant in a suit filed by the respondents no.1&2 viz. Mst. Rasheeda Siddiqi & Mst. Nemat King against respondents no.3&4 viz. Mustafa Aleem Siddiqi & Ms. Amna Siddiqi.
4. The suit from which this petition arises has been filed for recovery of possession of immovable property. The defendants / respondents no.3&4

are the son and daughter-in-law of the respondent no.1 / plaintiff. The respondent no.2 / plaintiff is the daughter of respondent no.1 / plaintiff.

5. The petitioner is the husband of the respondent no.1/plaintiff and father of respondent no.2/plaintiff and respondent no.3 / defendant and father-in-law of respondent no.4/defendant.

6. The respondents no.1&2 / plaintiffs have sought possession from the respondents no.3&4 on the basis of title. It is the case of the respondents no.1&2 / plaintiffs that the respondent no.1 / plaintiff is the owner of the property, having purchased the same with the monies contributed by the respondent no.2 / plaintiff.

7. The petitioner sought impleadment in the suit, at the stage of final arguments, when the suit was pending since the year 2008, pleading that the monies for purchase of the property in the name of respondent no.1 were provided by the petitioner, being the husband of the respondent no.1, and that the petitioner is also residing in the property with respect to which the suit has been filed.

8. The respondents no.1&2 / plaintiffs as well as respondents no.3&4 / defendants opposed the application of the petitioner for impleadment. The respondents no.3&4 / defendants stated that the petitioner was residing in the property but as the father / father-in-law of the respondents no.3&4 / defendants and not in exercise of any right.

9. The learned ADJ has dismissed the application for impleadment reasoning that though it was argued that the property was purchased in the name of respondent no.1 / plaintiff with the monies of the petitioner but it

was not so pleaded in the application and the petitioner was neither a necessary and nor a proper party to the suit.

10. The only argument of the counsel for the petitioner is that the petitioner is a very unfortunate husband and father.

11. The same does not entitle the petition of the petitioner being entertained. At this stage, the counsel for the petitioner states that the respondent no.1 / plaintiff was a housewife and had no earning and the entire money for purchase of the property has been contributed by the petitioner.

12. Not only is such a claim barred by the Prohibition of Benami Property Transactions Act, 1988 but even otherwise a suit filed by the respondents no.1&2 / plaintiffs for recovery of possession on the basis of title against respondents no.3&4 / defendants cannot be converted into a suit by the petitioner to challenge the title claimed by the respondent no.1 / plaintiff. The same if allowed, would entirely change the nature of the suit.

13. No ground for interference with the impugned order is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 09, 2017

‘gsr’..