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

+ **CM(M) 1071/2017**

RAVI KAPUR

..... Petitioner

Through: Mr. Naresh Thanai, Adv.

Versus

LAXMI KUMAR KAPUR & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.09.2017**

CM No.34953/2017 (for exemption)

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

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3. This petition under Article 227 of the Constitution of India impugns the order [dated 1st July, 2017 in CS DJ No.78742/2016 of the Court of Additional District Judge (ADJ)-II, North-West District, Rohini Courts, Delhi] rejecting the contention of the counsel for the petitioner / defendant no.1 that no evidence is required in the suit and holding that the dispute cannot be decided without evidence and posting the suit on 25th October, 2017 for framing of issues.

4. The suit from which this petition arises was instituted in this Court and has been transferred to the District Court on enhancement in minimum pecuniary jurisdiction of this Court.

5. While the suit was pending in this Court as CS(OS) No.1428/2013, I had occasion to deal therewith and vide order dated 3rd April, 2014 therein had considered the need for framing of issues and after hearing the counsels

had made certain observations including as to the need for the respondent no.1 / plaintiff to amend the plaint.

6. The counsel for the petitioner / defendant no.1 on enquiry states that the plaint was indeed amended after that and the counsel for the respondent no.1 / plaintiff also was of the view that no evidence is required and both filed written submissions on the legal issues arising in the suit.

7. The parties are siblings. As recorded in the order dated 3rd April, 2014, according to the counsel for the respondent no.1 / plaintiff, the parents of the parties executed mutual Wills dated 20th April, 2016 whereunder after the parents, the ground floor of the property was bequeathed to respondent / defendant no.2, the first floor to the petitioner / defendant no.1 and the second floor to the respondent no.1 / plaintiff. The respondent no.1 / plaintiff instituted the suit pleading that the petitioner / defendant no.1 had got executed gift deeds dated 8th April, 2009 and 15th July, 2010 of the entire property in his own favour from the surviving parent and contending that the Wills being mutual, the surviving parent could not have executed the gift deeds of the property in favour of the petitioner / defendant no.1.

8. I have enquired from the counsel for the petitioner / defendant no.1, whether the petitioner / defendant no.1 admits the mutual Wills dated 20th April, 2006.

9. The counsel for the petitioner / defendant no.1 states that he admits the execution on 20th April, 2006 of the Wills by the parents but according to him, they are not mutual Wills.

10. It is further argued that thus the only question to be decided in the suit from which this petition arises is, whether the Wills dated 20th April, 2006,

on their interpretation, were mutual Wills and if so, whether they could be changed by the surviving parent and if the answer to the said question was to be that the Wills are not mutual or that though mutual, the surviving parent could deal with the property, then there is no other challenge to the Gift Deeds.

11. It is thus contended that there was no need for evidence.

12. A reading of the impugned order does not show the learned ADJ to have appreciated the controversy. In fact, the order is bereft of any reason and is general and vague.

13. However since the learned ADJ has posted the suit on 25th October, 2017 for framing of issues, I have enquired from the counsel for the petitioner/defendant no.1, why the petitioner / defendant no.1 cannot at the stage of framing of the issues urge that no issue of fact requiring trial arises.

14. The counsel for the petitioner / defendant no.1 states that the order dated 1st July, 2017 would come in his way.

15. Rather than issuing notice of this petition and which may delay rather than expedite the disposal of the lis, I am of the view that the petitioner / defendant no.1 may on 25th October, 2017, at the stage of framing of the issues, argue before the learned ADJ in the aforesaid perspective and if remains aggrieved from the order of that date, may approach this Court again, including by way of challenge to the order dated 1st July, 2017.

16. With the aforesaid, the petition is disposed of.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 22, 2017/‘gsr’..

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