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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1138/2017**
HAFIZ MOHD TAHIR (DECEASED)
THR LRS & ANR Petitioners

Through: Mr. S.H. Nizami, Adv.

Versus

NAWAB (DECEASED) THROUGH LRS & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.10.2017**

CM No.37024/2017 (for exemption)

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

CM(M) 1138/2017 & CM No.37023/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 31st August, 2017 in CS No.06/2017 of the Court of Additional District Judge (ADJ)-01, North-East District, Karkardooma Courts, Delhi] of dismissal of the application of the petitioner / defendant no.1 for framing of additional issues.

4. The suit from which this petition arises is recorded to have been filed as far back as on 18th September, 1995. The suit was for the relief of recovery of possession of immovable property. On 13th March, 1997, the following issues were framed in the suit:

- i. Whether there is no cause of action in favour plaintiffs and against the defendants no.1 and 2? OPP
- ii. Whether the suit is properly valued for the purposes of court fees and jurisdiction? OPP

iii. Whether the plaintiffs are entitled for the relief claimed? OPP

iv. Relief.”

5. The suit was dismissed vide judgment dated 24th March, 2005, *inter alia* holding that the plaintiffs had miserably failed to prove entitlement to the relief of possession.

6. The plaintiff preferred RCA No.117/2007 which was also dismissed by the learned ADJ vide judgment dated 5th September, 2007. The learned ADJ *inter alia* also held that since according to the plaint, the property was agricultural land, the suit was barred by Section 185 of the Delhi Land Reforms Act, 1954.

7. The plaintiff preferred RSA No.265/2007 to this Court and in which the following substantial question of law was formulated:

“Whether the Courts below were right in giving findings on merits after it was held that the suit was not properly valued for purposes of court fee and jurisdiction, without giving an opportunity to the appellants to value the suit properly and pay the deficient court fee?”

and the second appeal was disposed of vide order dated 30th October, 2009 holding that the Suit Court, after coming to the conclusion that the court fees on the plaint had to be paid on the market value of the land had proceeded to dismiss the suit and had not given an opportunity to the plaintiff to value the suit correctly and to pay the deficient court fees, and remanding the suit to the Suit Court to provide sufficient opportunity to the parties to produce evidence for ascertainment of market value of the land subject matter of the suit and to submit their arguments on issue no.(ii) and thereafter give sufficient time to the plaintiff to deposit the requisite deficient court fees and to thereafter “proceed to decide the case on merits after re-hearing the parties”.

8. The proceedings now pending before the Suit Court are subsequent to the aforesaid order in Second Appeal.

9. I may notice that the learned ADJ acting as the First Appellate Court had maintained the judgment of the Suit Court and dismissed the appeal of the plaintiffs. This Court has set aside the judgment and decree of the Suit Court and the First Appellate Court but on the sole substantial question of law aforesaid and only for the reason aforesaid. Else, this Court has not interfered with the findings of the Suit Court or of the First Appellate Court of the plaintiff, *de hors* the question of valuation, being not entitled to the relief of possession.

10. It was in the said remanded proceedings that the petitioner / defendant no.1 sought framing of following additional issues:

- “i. If the suit filed by the appellant for possession in respect of the suit property described as agricultural land after urbanization of the village was maintainable in a civil court.
- ii. Whether the suit was valued properly for the purpose of court fee and jurisdiction.
- iii. Whether the suit was not maintainable in view of Section 185 of Delhi Land Reforms Act.
- iv. Whether the suit filed by the appellant was barred by limitation.”

contending that the ADJ acting as the First Appellate Court had returned findings thereon.

11. The First Appellate court in its judgment dated 5th September, 2007 has *inter alia* summarised the law to be, that despite notification of urbanization, the provisions of Delhi Land Reforms Act would remain applicable to a property forming part of rural area. However, it has also

been held that if the land ceases to be land within the meaning of Section 2(13) of the said Act and is treated as part of Municipality, then the Civil Court would have jurisdiction to entertain the suit.

12. The counsel for the petitioner / defendant no.1, on enquiry, states that the land is part of the Municipality.

13. It is inexplicable that if according to the petitioner / defendant no.1 also the Delhi Land Reforms Act would not apply to the property owing to the same having become part of the Municipality, why is the petitioner / defendant no.1 seeking framing of additional issues aforesaid.

14. Moreover, it is also remains to be considered that the Second Appeal having been entertained only on a question pertaining to valuation and the findings on merits having not been disturbed, what is the effect thereof.

15. The entire proceedings have been conducted in a haywire manner and it is not deemed appropriate at this stage to interfere in exercise of jurisdiction under Article 227 of the Constitution of India though it appears that the matter can be resolved forthwith.

16. Liberty is given to the petitioner / defendant no.1 to argue on all the aforesaid aspects before the Trial Court.

Dismissed.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2017

‘gsr’..

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