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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1237/2017 & CM No.39029/2017 (for stay).
RAJBIR SINGH Petitioner
Through: Mr. D.S. Dalal, Adv.
versus
RAJINDER SINGH & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.10.2017**

CM No.39030/2017 (for exemption).

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

CM(M) 1237/2017 & CM No.39029/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order [dated 30th August, 2017 in CS No.621290/16 of the Court of Additional District Judge-13 (Central), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner / defendant no.1 for transfer of the suit to this Court.
4. The suit, from which this petition arises, has been filed by the respondent no.1 / plaintiff against the petitioner / defendant no.1 and respondents no.2 to 6 / defendants for partition of immovable properties at Anand Parbat, New Delhi and at Bahadurgarh, Haryana and the suit, valued for the purposes of jurisdiction at Rs.60,00,000/-, though instituted in this Court was transferred to the District Court on enhancement of minimum pecuniary jurisdiction of this Court.

5. The petitioner / defendant no.1 in his written statement, which was filed when the suit was pending in this Court, though pleaded in para 7 (c) thereof that the common predecessor of the parties, out of joint family funds also purchased the property bearing house no.111, Pocket-1, Sector-5, Rohini, Delhi and two plots adjacent to the same measuring 48 meters each, in the name of the respondent no.1 / plaintiff and the respondent no.1 / plaintiff sold the house and the plots and purchased house no.93, Pocket-H-19, Sector 7, Rohini, Delhi from said funds and as such the said house no.93, Pocket-H-19, Sector 7, Rohini, Delhi is joint family property and the petitioner / defendant no.1 is entitled to 1/3rd share in the same, but else prayed for dismissal of the suit and did not claim any relief of partition of house no.93, Pocket-H-19, Sector 7, Rohini, Delhi.

6. After the suit was transferred to the District Court, the petitioner / defendant no.1 filed the application aforesaid contending that since the value of house no.93, Pocket-H-19, Sector 7, Rohini, Delhi was Rs.3,00,00,000/-, the total value of the properties subject matter of partition was Rs.3,66,00,000/- and the valuation of the suit for the purposes of jurisdiction was beyond the maximum pecuniary jurisdiction of the learned Additional District Judge.

7. The learned Additional District Judge has dismissed the said application, reasoning that the valuation of the Rohini property was not admitted by the respondent no.1 / plaintiff and thus the suit could not be so transferred and the valuation as per the plaint was within the pecuniary jurisdiction of the learned Additional District Judge.

8. Though the reasoning given by the learned Additional District Judge is incomprehensible and though in a partition suit all parties enjoy the same status and there can be no denying of the fact that the petitioner / defendant no.1 could have in the same suit also sought partition of the aforesaid Rohini property but the fact of the matter remains that though the petitioner / defendant no.1 took a plea with respect to the Rohini property but did not make any claim with respect thereto and which claim ought to be made by filing a claim or counter claim for partition of the said property including by pleading the valuation and the cause of action paragraphs as required in the plaint.

9. Without any pleadings with respect to the Rohini property, framing of issue on the application aforesaid of the petitioner / defendant no.1 by the learned Additional District Judge with respect to the said Rohini property is also erroneous. Without there being any claim for partition of the said property and without the other parties to the suit having an opportunity to respond to the said claim, it is not understandable as to how the learned Additional District Judge has proceeded to frame the issues with respect to Rohini property.

10. Though for reasons different from that given by the learned Additional District Judge, no merit is found in the challenge made by the petitioner / defendant no.1.

11. The petition is dismissed.

12. The counsel for the petitioner / defendant no.1 has also drawn attention to the order dated 29th August, 2017 in the suit where the matter was adjourned to 30th August, 2017, also for arguments on the application

under Order XXII Rule 4 of the CPC and has contended that the defendant no.3 in the suit Smt. Chander Wati had expired and application for substitution of her legal representatives filed by the respondent no.1 / plaintiff was pending. It is contended that without first substituting the legal representatives of the defendant no.3, the proceedings could not have been undertaken in the suit on 30th August, 2017.

13. I have enquired from the counsel for the petitioner / defendant no.1 whether the legal representatives of the defendant no.3 have been substituted since then.

14. The answer is in the negative.

15. A perusal of the orders dated 29th August, 2017 and 30th August, 2017 show the presence of the counsel for the legal representatives of the defendant no.3.

16. The grievance with respect to the application of the petitioner / defendant no.1 having been decided on 30th August, 2017 without passing a formal order on the application aforesaid under Order XXII Rule 4 of the CPC if at all could be of the legal representatives of the defendant no.3 and not of the petitioner / defendant no.1. Even otherwise, the petitioner / defendant no.1 having participated in the proceedings on 30th August, 2017 and having argued the application cannot now today be heard to challenge the order by contending that he should not have argued the application on 30th August, 2017 and invited order thereon.

17. There is thus no merit in the said plea also.

18. Dismissed.

19. The learned Additional District Judge to, in the light of the above order re-consider framing additional issues aforesaid.

20. A copy of this order be forwarded to the learned Additional District Judge for consideration.

RAJIV SAHAI ENDLAW, J

OCTOBER 31, 2017

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