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

+ **CM(M) 1267/2018 & CAV 958/2018, CM APPL. 43447-43449/2018**

RAJEEV BEHL & ANR Petitioner

Through: Mr. Arjun Mitra, Adv. with petitioner
no.1

versus

S K BEHL Respondent

Through: Counsel for respondent with
respondent.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **16.10.2018**

CM APPL. 43448-43449/2018 (Exemptions)

Exemptions allowed, subject to just exceptions.

CM(M) 1267/2018 & CAV 958/2018, CM APPL. 43447/2018

Caveator is present. CAV 958/2018 stands discharged.

Submissions have been made on behalf of either side.

Vide the present petition, the petitioners assail the impugned order dated 24.09.2018 of the learned Court of the ADJ-03, Rohini Courts, North, Delhi in CS No.57796/2016 whereby an application filed by the petitioners herein under Order 14 Rule 5 r/w Section 151 of the CPC seeking an amendment in the issues framed on 28.03.2018 which read to the effect that:

- i. Whether the suit property is a joint family property? OPD.*
- ii. Whether the suit has not been valued properly for the*

purpose of court fees and jurisdiction? OPD.

- iii. Whether the suit is barred by limitation? OPD*
- iv. Whether plaintiff has concealed material facts, if so to what effect? OPD*
- v. Whether suit is barred under Order 2 Rule 2 CPC? OPD*
- vi. Whether the plaintiff is entitled for decree of possession as prayed for? OPP*
- vii. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP*
- viii. Whether the plaintiff is entitled for decree of damages, if so, at what rate and for what period? OPP*
- ix. Relief.*

which were sought to be modified by framing of additional issues seeking that the additional issues be framed to the effect that:

- i. Whether the suit property is self acquired property of the plaintiff or the same is a joint family property? Onus on the parties.*
- ii. Whether the filing of application by the plaintiff under Order 23 Rule 1(3) for withdrawal of earlier suit and subsequent filing of this instant suit entitles the plaintiff to amend the subject matter, facts of the case and cause of action without leave of the court? OPP*
- iii. Whether there exists any cause of action to file the present suit, if yes, does it arose only in year 2014? OPP*
- iv. Whether the first floor of the property was constructed by*

the plaintiff in the year 1999? OPP

v. *Whether the defendants acquired the title by adverse possession qua the portion of their possession? OPD*

vi. *Whether the plaintiff approached the court with unclean hands? OPD*

was declined and dismissed with costs of Rs.5,000/-.

The matter is indicated to be fixed for plaintiff's evidence for the date 20.10.2018. On a consideration of the submissions that have been made on behalf of either side, taking into account the factum that the aspect observed in the impugned order to the effect that the conveyance deed in relation to the suit property is in existence and in favour of the plaintiff of the suit, the contention raised on behalf of the petitioners herein to the effect that issue no.1 as framed on 28.03.2018 which reads to the effect that '**whether the suit property is a joint family property?**' be re-framed to the effect that '**whether the suit property is self acquired property of the plaintiff or the same is a joint family property? Onus on the parties.**' is declined.

As regards the additional issue at serial no.2 sought to be framed referred to hereinabove which reads to the effect that:

"Whether the filing of application by the plaintiff under Order 23 Rule 1(3) for withdrawal of earlier suit and subsequent filing of this instant suit entitles the plaintiff to amend the subject matter, facts of the case and cause of action without leave of the court? OPP"

without any observations on the merits or demerits of the contentions and evidence that may be led by the parties in the suit, on a perusal of the suit

initially which was a suit for ejectment and the present suit which is a suit for recovery of possession, permanent injunction and mesne profit/damages with submissions made on behalf of either side admittedly to the effect that the application dated 22.07.2015 filed by the respondent herein in the suit as initially submitted bearing suit no.275/14, was admittedly allowed, and on a perusal of the paragraphs in relation to the cause of action in the present suit, it is considered appropriate to allow the prayer made by the petitioners herein for framing of the additional issue no.2 as detailed hereinabove.

As regards the prayers made by the petitioners herein seeking framing of the additional issues at serial nos.3 & 4 which reads to the effect that:

iii. Whether there exists any cause of action to file the present suit, if yes, does it arose only in year 2014? OPP

iv. Whether the first floor of the property was constructed by the plaintiff in the year 1999? OPP

it is essential to observe that the said aspects are essentially to be brought forth by the plaintiff of the suit i.e. the respondent herein through evidence to be led and the said aspects have essentially to be determined during adjudication of the issues at serial nos.6, 7, 8, 9 of the issues as framed initially on the date 28.03.2018. The prayer thus made by the petitioner herein seeking framing of the additional issues at serial nos.3 & 4 vide their application under consideration is thus declined. As regards issue no.5 sought to be additionally framed, despite contention on behalf of the respondent that self-destructive pleas cannot be raised in view of the contention raised on behalf of the petitioner through their written statement, the prayer seeking framing of issue at serial no.5 which reads to the effect

that:

- v. *Whether the defendants acquired the title by adverse possession qua the portion of their possession? OPD*

is allowed.

As regards the prayer made by the petitioners seeking framing of additional issue at serial no.6 which reads to the effect that:

- vi. *Whether the plaintiff approached the court with unclean hands? OPD*

it is essential to observe that an issue in relation thereto is already on the record as framed on 28.03.2018 at serial no.4 which reads to the effect that:

- iv. *Whether plaintiff has concealed material facts, if so to what effect? OPD*

and furthermore, the said aspect would also be covered by the issue as framed at serial no.7 on 28.03.2018.

Taking the above observations into account, the issues in the suit are thus now to the effect that:

- i. *Whether the suit property is a joint family property? OPD.*
- ii. *Whether the suit has not been valued properly for the purpose of court fees and jurisdiction? OPD.*
- iii. *Whether the suit is barred by limitation? OPD*
- iv. *Whether plaintiff has concealed material facts, if so to what effect? OPD*
- v. *Whether suit is barred under Order 2 Rule 2 CPC? OPD*
- vi. *Whether the plaintiff is entitled for decree of possession as*

prayed for? OPP

- vii. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP*
- viii. Whether the plaintiff is entitled for decree of damages, if so, at what rate and for what period? OPP*
- ix. Whether the filing of application by the plaintiff under Order 23 Rule 1(3) for withdrawal of earlier suit and subsequent filing of this instant suit entitles the plaintiff to amend the subject matter, facts of the case and cause of action without leave of the court? OPP*
- x. Whether the defendants acquired the title by adverse possession qua the portion of their possession? OPD*
- xi. Relief.*

The petition is disposed of accordingly with directions however that the plaintiff is permitted to lead further additional evidence before the learned trial Court in relation to these issues which have been framed.

Since, it is apparent on a consideration of the record that the petitioner no.1 is the son of the respondent and petitioner no.2 is the daughter-in-law of the respondent and both the petitioners and the respondent are indicated to be residents of the same building and stated to be residing on the same floor at H.No.19, State Bank Colony, GT Karnal Road, Delhi, it is considered appropriate and essential in the interest of justice that the parties are referred to Mediation to explore the possibilities of a settlement. The petitioners in person and the respondent in person are thus directed to appear

before the Co-ordinator, Delhi High Court Mediation and Conciliation Centre on the date 31.10.2018 at 2:30 pm to explore the possibility of a settlement with the report of the Mediation Centre being placed before the learned trial Court by the date 26.11.2018.

Payment of cost of Rs.5,000/- as imposed vide the impugned order is dispensed with.

ANU MALHOTRA, J

OCTOBER 16, 2018

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