

\$~6 & 7 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th May, 2018

- + CM(M) 957/2017 and CM APPL.32180/2017
- + CM(M) 958/2017 and CM APPL.32183/2017

KANWAL CHAUDHARY Petitioner

Through: Mr. Rajat Navet, Advocate with
Petitioner in person.

versus

BIRENDER CHAUDHARY Respondent

Through: Mr. Puneet Taneja, Advocate
with Respondent in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitions at hand were brought to bring challenge to the correctness, legality and propriety of orders dated 23.01.2016 and 05.07.2017 passed on the file of civil suit (CS No.101/2012 and New No.SCJ No.608586/16) which was originally instituted by Dr. (Mrs.) P.L.Chaudhary, late mother of the parties, who are brothers to each other. The said original plaintiff expired on 11.07.2013. By the first said order dated 23.01.2016, an application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 (CPC) of the petitioner was

dismissed, while similar application under Order XXII Rule 3 CPC of the respondent was allowed, he having been substituted in place of deceased original plaintiff, though with certain observations added that in order to continue with the suit, the substituted plaintiff would be obliged to bring in some amendments to the plaint. It is in the wake of the said order that the application under Order VI Rule 17 CPC was moved by the respondent, who had been substituted as the plaintiff, seeking to bring on record certain additional averments described as facts pertaining to subsequent developments. The said application was allowed, repelling objections of the petitioner, by order dated 05.07.2017.

2. The second captioned petition [CM (M) 958/2017] is directed against the first order dated 23.01.2016 and the first petition – [CM(M) 957/2017] is directed against the second order dated 05.07.2017.

3. During the course of hearing, it was brought out that the parties are also locked in other litigation including civil suit filed on the original side of this court – it being CS(OS) No.663/2014, which is a suit for partition including the property which is the subject-matter of the suit from which the present proceedings arise, it having been filed by the petitioner against the respondent.

4. After some hearing, the learned counsel for the petitioner submitted that his only apprehension is with regard to the observations in the order dated 05.07.2017 accepting the plea of the respondent, who has been allowed to take over the suit from the deceased mother,

as to his *locus standi* and with regard to the Will on which the said party places reliance, which may be construed as conclusive. This apprehension, the learned counsel for the respondent points out, is misplaced, inasmuch as such observations have been recorded in an interim order for the purpose of deciding the application under Order VI Rule 17 CPC. The said observations cannot be treated as final expression on merits of the contentions of either side connected thereto.

5. In wake of the above observations recorded by this court, the counsel for the petitioner submitted that he is under instructions to withdraw the present petitions, he reserving the right to challenge the *locus standi* of the respondent to prosecute the case in question as the substituted plaintiff, by his application under Order VII Rule 11 CPC, which is already pending before the trial court. The petitioner, at the same time, prays that this court in exercise of its power and jurisdiction under Section 24 CPC, may consider withdrawing the suit in question from the district court and transferring it to the original side of this court for it to be tried with the partition suit, which is already pending here. The counsel for the respondent, on instructions, submitted his consent to the last said prayer for transfer of the suit.

6. The contentions of the petitioner to challenge the *locus standi* of the respondent and maintainability of the suit are reserved to be agitated through the application under Order VII Rule 11 CPC, which is presently pending. With the consent of both the parties, Civil suit, SCJ No.608586/2016, titled *Dr. (Mrs.) P.L. Chaudhary vs. Sh. Kamal*

Chaudhary, is withdrawn from the file of the court of Sh. A.K. Agrawal, Civil Judge-01, (West), Tis Hazari, Delhi and transferred to the original side of this court for further proceedings in accordance with law, to be listed along with CS (OS) No.663/2014 before the same bench. The prayer for consolidation of the said two suits will, however, have to be considered by the same bench.

7. The transferor court is directed to send the file to the original side of this court after fixing an appropriate date for the parties to appear here.

8. Both the petitions and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

MAY 07, 2018

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