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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 19/2018 and C.M. Appl. No. 7792/2018 (for stay)

URMILA DEVI

..... Appellant

Through: Mr. Satish, Advocate.

versus

DHANNO DEVI

..... Respondent

Through: Mr. Pawan Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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24.04.2018

1. As agreed, this appeal is allowed by setting aside the impugned order dated 15.7.2017, and especially because of what is recorded in the order passed by this Court on 8.1.2018, which reads as under:-

“C.M.No.553/2018 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. Nos.552/2018 (for condonation of delay in filing) & 554/2018 (for condonation of delay in re-filing)

2. For the reasons stated in the application, delay of 31 days in filing and 8 days in re-filing the appeal is condoned subject to just exceptions.
C.M.s stand disposed of.

+RFA No.19/2018

3. Learned counsel for the appellant argues that there are disputes with respect to three properties which are in question in suit, one at Delhi and two at Allahabad and as argued hereinafter it is contended

that trial court could not have passed a preliminary decree at the stage of pleadings without any evidence being recorded.

4. It is vehemently contended that written statement though lacks on many aspects with respect to claim of co-ownership of the appellant with her husband with respect to one property being house no.G-304, Prayag Kunj, Ansal Apartment, 3 Stretch Road, Civil Lines, Allahabad and co-ownership of the appellant/defendant with brother of the appellant with respect to property G-44, UPSIDC Industrial Area, Naini, Allahabad, however, it is prayed that these aspects be considered by this Court inasmuch as appellant will file an application for amendment of the written statement in this appeal because correct facts are reflected as per the title documents of the two properties at Allahabad being G-304, Prayag Kunj, Ansal Apartment, 3 Stretch Road, Civil Lines, Allahabad and G-44, UPSIDC Industrial Area, Naini, Allahabad.

5. With respect to the property no.G-304, it is argued that title deed of this property was in the joint names of the appellant with her husband and therefore even qua this property only 50% share will be available for partition and not the entire property.

6. As regards the property bearing No.B-1392, Shastri Nagar, Delhi-110052 it is argued that the suit could lie on behalf of the respondent/plaintiff for 40 sq yds provided that there was a partition of the original property as between Sh. Ajay Kumar Sharma and his brother Sh. Mahinder Kumar Sharma, and who were the owners in terms of the Will of the grandmother, but since there is no partition of this Delhi property the suit could not have filed without making the other brother Sh. Mahinder Kumar Sharma as a party.

7. As regards the property G-44, UPSIDC Industrial Area, Naini, Allahabad, reference is invited to the lease deed executed by UPSIDC of G-44 property which shows that this G-44 property was actually allotted in 2006 to Sh. Ajay Kumar Sharma husband of the appellant and the real brother of the appellant/defendant. Accordingly, it is argued that partition can take place with respect to 50% share of this G-44 property and not the entire property.

8. It is argued that the suit has been disposed of at the stage of pleadings without trial and which could not have been done.

9. Notice be issued to the respondent, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 24th April, 2018.

10. Trail court record be requisitioned.”

2. It is agreed and liberty is given to the appellant/defendant to seek amendment of the written statement as per what is noted in the order dated 8.1.2018.

3. Trial court is, however, requested to expedite the disposal of the suit and none of the parties will be entitled to more than five opportunities to complete their evidence.

4. The appeal is accordingly allowed. Impugned order dated 15.7.2017 is set aside.

5. Parties to appear before the Court of Sh. Harish Kumar, ADJ-13, Central District, Tis Hazari Courts, Delhi, on 15th May, 2018.

Dasti to counsels for the parties.

VALMIKI J. MEHTA, J

APRIL 24, 2018

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