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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 25th April, 2018

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CONT.CAS(C) 836/2017

MANJULA SAHA & ANR. Petitioners
Through: Mr. Arun Vohra, Ms. Aakriti Vohra
and Mr. Pranay Mehta, Advocates.
(M:9811089104)

versus

MAYA RANI SAHA (SD) THROUGH LRS Respondent
Through: Mr. R. K. Bindal and Mr. Anurag
Bindal, Advocates (M:9999955947)
with Respondent in person.

AND

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RFA 608/2016

MANJULA SAHA & ANR. Appellants
Through: Mr. Arun Vohra, Ms. Aakriti Vohra
and Mr. Pranay Mehta, Advocates.
(M:9811089104)

versus

MAYA RANI SAHA (SD) THR LRS Respondent
Through: Mr. R. K. Bindal and Mr. Anurag
Bindal, Advocates (M:9999955947)
with Respondent in person.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Learned proxy counsel for Mr. S. K. Bhaduri, Advocate for Appellants/Petitioners appears and seeks discharge in the matter. Mr. S. K. Bhaduri, Advocate is discharged in the matter as Mr. Arun Vohra has

entered appearance for Appellants.

CM Nos.10536/2017, 15146/2017 and 23090/2017

2. The dispute is between the Appellants/Plaintiffs (*hereinafter*, 'Plaintiffs') – who are sisters, with their brother, the Respondent/Defendant (*hereinafter*, 'Defendant'). A suit for partition filed by the Plaintiffs has been dismissed by the Trial Court. Order dated 29th August, 2016 was passed by this Court in the present appeal in the following terms:

“In view of the decision of this Court dated 22.02.2008 in FAO No.321-22/2006, titled as “Smt. Manjula Saha vs. Smt. Maya Rani Saha”, the parties are directed to maintain status quo with regard to the right, title, interest and possession of the subject property.”

3. The Plaintiffs have filed the present application being CM No.10536/2017 seeking the following relief.

“It is, therefore, respectfully prayed before this Hon'ble Court that the respondent may be directed to maintain the statement of account in respect of the rent being realized by the respondent from the tenant and file the same before this Hon'ble Court; and supply a copy of the same with in proper voucher and not to change the tenant without permission of this Hon'ble Court in accordance with the order dt. 22/2/2008 passed in F.A.O. No. 321-22/2006, in the interest of justice.”

4. Learned counsel for the Defendant submits that the status quo order was passed in view of decision dated 22nd August, 2008 (wrongly noted as 22nd February, 2008) in FAO 321-22/2006 titled as “Smt. Manjula Saha vs.

Smt. Maya Rani Saha”, and that the said order is no longer in operation as the probate in favour of the Defendant has been subsequently allowed by the Trial Court in probate petition no.162/2008 (new). Further, even the suit for partition filed by the Plaintiffs has been dismissed. FAO No.437/2016, file of which has been tagged with the present appeal, is against the grant of probate in favour of the Defendant.

5. The Ld. counsel for the Defendant further submits that the first floor of the premises bearing no.H-1491, Chittaranjan Park, New Delhi-19 (*hereinafter, 'suit property'*) has always been let out by the Defendant and, therefore, the Defendant should be allowed to continue letting out the suit property. He further submits that the Defendant shall continue to maintain the statement of account in respect of rent being realised from the suit property and file the said statement on a half yearly basis before this Court. Learned counsel thus submits that the prayer in this application the property should not be allowed to be let out does not deserve to be granted. He submits that the property has always been rented out since 2006.

6. Ld. Counsel for the Plaintiffs submits that there is a status quo order and hence the order should not be varied.

7. Having heard the parties, it is not disputed that the property has always been rented out. Even the prayer in the present application is that regular accounts should be filed and the tenant should not be changed - thereby clearly acknowledging that the property is under a tenancy. The prayer that the tenant should not be changed is unsustainable as the property was always under a tenancy. Status quo order cannot be interpreted against induction of a new tenant if the old tenant either vacates the property or the lease is not renewed. Moreover, on a prima facie view, the probate in favour

of the Defendant having been upheld and the suit for partition filed by the Plaintiffs/sisters of the Defendant/brother having been dismissed, the prayer is unsustainable. In view of the above facts, the following directions are passed.

1) The Defendant shall be permitted to continue to rent out the suit property to tenants and if there is a change in the tenancy, the newly entered lease agreement shall be placed on record within a month of the signing of the agreement.

2) The Defendant shall file half yearly statement of rent being received from the tenant and a statement of expenses, if any, undertaken for upkeep of the premises.

8. All three CMs are disposed of in the above terms.

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9. The main allegations in the contempt petition are that the Defendant has executed a fresh lease deed dated 21st May, 2017 without permission of the Court. In view of the order passed in CM. 10536/2017, the contempt petition does not survive. The suit property is being rented out since 2006 and this fact is within the knowledge of the Plaintiffs, which is evident from the averments and prayer made in application CM No.10536/2017 filed by the Plaintiffs.

10. In view thereof, the contempt petition is disposed in terms of the order passed in CM No. 10536/2017 and other CMs above.

CM No.30129/2016 (stay)

11. Status quo order shall be continued to be maintained as to the title in the suit property. There will be no transfer or creation of third party interest except to the extent permitted above.

12. CM is disposed of.

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13. List on 30th August, 2018. Parties to explore the possibility of settlement in the meantime.

**PRATHIBA M. SINGH
JUDGE**

APRIL 25, 2018/dk

