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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 5/2019 & CM APPL. 1113-1114/2019, CM APPL. 10205-10206/2019**

PAWAN KUMAR NEWAR & ANR Appellant

Through Mr.Avneesh Garg, Adv.

versus

NAND KUMAR NEWAR & ANR Respondent
Through Mr.M.M.Kalra with Ms.Sonali
Kumar, Advs for R-1.
Mr.Y.R.Sharma, Adv for R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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25.03.2019

The appellants have preferred the present first appeal to assail the order date 15.11.2018 passed by the learned Single Judge in CS(OS) 362/2009 and I.A.14889/2018. The application referred to in the impugned order has been moved by the appellant to seek impleadment in the said suit. The learned Single judge while passing the impugned order listed the pending application for hearing on 21.01.2019 and further clarified that the recording of the evidence shall continue before the Local Commissioner notwithstanding the pendency of the application.

The respondent/Nand Kumar Newar is the plaintiff in

CS(OS)362/2009, which has been preferred by him against Mr.Kamal Kumar Newar, one of his brothers. The appellant is one of the brothers of the aforesaid Mr.Kamal Kumar Newar in the said suit. The relief sought by the respondent no.1 herein in the present suit is for possession of a particular property i.e. property no. A-1/281 Safdarjung Enclave, New Delhi.

Subsequent to the filing of CS(OS) 362/2009 by the respondent no.1, the defendant in the said suit, Mr. Kamal Kumar Newar i.e. respondent no.2 filed CS(OS)150/2010 to claim partition of various properties, which were claimed to have been purchased from the funds of the Hindu Undivided Family(HUF). The aforesaid property no. A-1/281 Safdarjung Enclave, New Delhi is also claimed to be one of the HUF properties. The present appellant is one of the defendants in the said suit. He has filed his written statement in the said suit, wherein he has claimed that the aforesaid property is the only HUF property. He has further disputed that the other properties mentioned in the said suit are HUF properties.

The appellant has sought impleadment in CS(OS)362/2009 on the premise that he too is in possession of the said property. This claim is disputed by the plaintiff in the said suit i.e. respondent no.1/Mr.Nand Kumar Newar. The grievance of the appellant is that without any decision on his application seeking impleadment, the recording of evidence before the Local Commissioner in CS(OS)362/2009 and its disposal would adversely affect his rights.

Learned counsel for the appellant has also drawn our attention to the order dated 26.02.2018 passed by the learned Single Judge of

this Court in T.P(C) 153/2016 titled ***Kamal Kumar Newar v. Nand Kumar Newar*** and T.P(C)19/2017 titled ***Pawan Kumar Newar & Anr. v. Nand Kumar Newar & Anr.***, wherein the aforesaid facts were taken into consideration and this Court transferred the CS(OS)9471/2016 pending before the learned ADJ, District-South, Saket Courts to the original side of this Court so that the same could be tried with the CS(OS)153/2010. We may observe that it is CS(OS)362/009, i.e. the suit filed by the respondent no.1 seeking possession upon transfer to the District Court had been renumbered as CS(OS)9471/2016.

Having heard the learned counsel for the parties, we are of the view that the recording of the evidence in CS(OS)362/2009 should proceed as scheduled. It is, however, clarified that in case the appellant's application to seek impleadment under order 1 rule 10 CPC is allowed, his rights after impleadment as a party defendant would not be prejudiced on account of the fact that the evidence already stands recorded in the suit and he shall be entitled to exercise all his rights as a party defendant in the suit. It goes without saying that the said application for impleadment should be decided at the earliest so as to prevent legal complications in the proceedings and also to ensure that the time and efforts of the Court and the litigating parties does not get wasted, lest the appellant is impleaded after further progress in the suit. Needless to say that the impleadment of the appellant should be decided before the suit is finally disposed of.

The appeal stands disposed of alongwith the pending applications in the aforesaid terms.

Dasti.

VIPIN SANGHI, J

MARCH 25, 2019/sr

REKHA PALLI, J