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

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Date of Order: 22.01.2019

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Tr. P. (C) No.4/2019

PAWAN KUMAR YADAV & ANR. Petitioners

Through: Mr. Kuljeet Rawal, Advocate.

Versus

SHAIL YADAV & ORS. Respondents

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

C.M. No.3108/2019 (for exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

Tr. P. (C) No.4/2019 & C.M. No.3109/2019 (for stay)

1. The petitioner seeks transfer of case being Misc. No.548/2018 in Civil Suit No.12592/2016 from the court of learned Additional District Judge-II, Central District, Tis Hazari Courts, New Delhi ('ADJ') to this court.

2. On 04.08.2018, the court of learned Additional District & Sessions Judge, Patiala House Court, New Delhi ('ADJ ND') passed a final decree for partition in Civil Suit No.12592/2016 titled as *Lt. Col. Gaj Singh Yadav (Retd.) through LRs. & Ors. Vs. Shyam Bai (deleted)*

& Ors. In the short order of the even date, the learned 'ADJ ND' observed as under:-

"An application under Order 39 Rule 2-A CPC moved on behalf of LRs of the defendant No.2 is pending. The said application, inter alia, pertains to the sale of agricultural land specified in Schedule B to the plaint in violation of the interim stay orders passed by the Court. The said agricultural land is not the subject matter of the final decree passed. The said application be therefore registered as a separate miscellaneous application.

Another application under Section 340 Cr.P.C. moved on behalf of the LR of the plaintiff is also pending. The said application be also registered as separate miscellaneous application."

3. The matter was taken up on 11.09.2018 by the successor court of learned 'ADJ', who observed as under :-

*"Present: Sh. Pawan Kumar Yadav – LR No.1 of the deceased plaintiff.
Sh. Vivek Sood, Sr. Advocate with Sh. Manish Gupta Advocate for LRs No.2(a) to 2 (f) with LR No.2(b).
Ms. Smita Chaudhary in person.
Defendant No.11 in person.*

Today, the matter is listed for arguments on two applications – under Order XXXIX Rule 2-A CPC made on behalf of LRs of the deceased defendant no.2 and the other application under Section 340 Cr.P.C. made on behalf of LRs of the deceased plaintiff. However, Ld. Counsel for LRs no. 2(a) to 2(f) submits that his other application made under Order XXXVIII Rule 5 read with Order XXXIX Rule

2A CPC is also pending disposal which has been referred to in the order dated 18.5.2018.

It is further submitted that pleadings are complete in both the two applications made on behalf of LR of deceased defendant no.2.

On this, Sh. Pawan Kumar Yadav – LR No.1 of the deceased plaintiff submits that the application under Order XXXVIII Rule 5 read with Order XXXIX Rule 2A CPC has already been disposed of in the judgment dated 04.8.2018. This submission has been disputed by Ld. Counsel for defendant No.2 (a) to 2 (f).

In view of the submissions, list the matter for clarification on the above point and for arguments on the aforesaid applications on 05.12.2018.”

4. On 05.12.2018, learned ‘ADJ’ passed the order, which reads as under :-

“05.12.2018

Present Sh. D.N. Goverdhan Advocate for the applicant.

Respondent/contemnor Ms. Taruna Yadav in person.

Memo of parties to the application under Order XXXVIII Rule 5 CPC and Order XXXIX Rule 2-A CPC dated 03.6.2017 not filed.

List the matter for filing of memo of parties to the aforesaid application on 06.3.2019.”

5. It is submitted by the learned counsel for the petitioner that on 05.12.2018, the petitioner along with the proxy counsel, Ms. Farzana, requested the court for a passover as the main counsel Mr. Kuljeet Rawal was to appear but the same was disallowed. He submits that the request of the petitioner for personal hearing was ignored by the Ld. ADJ and his written synopsis were not taken on record. He submits that three applications (i) under Section 151 CPC requiring the legal heirs of defendant No.2 to produce the receipts of cost of Rs.20,000/- and Rs.2 lacs (ii) under Section 151 CPC for drawing the decree sheet; and (iii) under Order XL Rule 1 CPC read with Section 151 CPC for appointment of Receiver, were returned by the Ld. ADJ and not taken on record.

6. He contends that the order dated 04.08.2018 reflects pendency of only two applications; one under Order XXXIX Rule 2A CPC; and another under Section 340 Cr.P.C. whereas the Ld. 'ADJ' wrongly recorded in the order dt. 11.09.2018 the submission of the counsel for LR's of defendant No.2 that another application under Order XXXVIII Rule 5 read with Order XXXIX Rule 2A CPC is also pending disposal. He submits that on 05.12.2018, the learned ADJ directed for filing of memo of parties to the application under Order XXXVIII Rule 5 CPC which is not pending as per order dt. 04.08.2018.

7. Summarising his reasons for transfer of the petition to this court, the Ld. Counsel for the Petitioner urged that since (i) the learned ADJ on 11.9.2018 wrongly recorded the submission of the learned counsel for LR's of defendant No.2 about the pendency of application

under Order XXXVIII Rule 5 read with Order XXXIX Rule 2A CPC;
(ii) failed to grant a passover on 05.12.2018 and to hear the petitioner and take the written synopsis on record, three applications on record, the matter should be transferred to this court for disposal of the pending applications in accordance with law.

8. I do not find any justification for transfer of case being Misc. No.548/2018. No personal bias is attributed to Ld ADJ. There cannot be any personal interest of the learned judicial officer. If the applicant is aggrieved of the order dated 11.09.2018 or 05.12.2018, he can avail his appropriate remedies available in law but certainly not the transfer of application. If the applicant/petitioner wants to move any application, he can file in accordance with law before the learned ADJ. Similarly, if no application under Order XXXVIII Rule 5 read with Order XXXIX Rule 2A CPC remains pending disposal after passing of the final decree on 04.08.2018, he can certainly bring the fact to the knowledge of the learned ADJ.

9. The petition along with application, being C.M. No.3109/2019, is disposed of accordingly.

(VINOD GOEL)
JUDGE

JANUARY 22, 2019
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