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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 675/2019**
RAM JEEWAN & ORS

..... Petitioners

Through : Mr.Swastik Singh, Mr.Atul Singh,
Mr.Raghu Vasisth, Mr.Himanshu
Dagar, Advocates.

versus

VED PAL & ORS

..... Respondents

Through : None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **01.05.2019**

CM APPL No.20612/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 675/2019 & CM APPL No.20611/2019

This petition challenges the order dated 24.04.2019. whereby
the learned Trial Court has passed the following order:

"In the present case, Plaintiff is asking for partition while the Defendant says that it is already partitioned. However, none of the parties have filed any document with respect to the ownership. In the circumstances, both the parties are hereby restrained from carrying out any activity on the impugned land till further orders. Application accordingly disposed off.

Copy of this order sheet be sent to SDM Office concerned for compliance of this order. Further a report be also called from SDM Office on the next date of hearing whether this land was over allotted to anyone and who is the owner of this land i.e. 8

bighas 16 biswas forming part of khasra No. 1173, 1172/1 and 1172/2 situated in the Revenue Estate of Village Rangpuri, Sub Division, Vasant Vihar, New Delhi.

Further SDM office is directed to take physical possession of the property fence it and ensure that no. construction activity takes place on it.”

It is submitted by the learned counsel for the petitioner on 23.04.2019 in C.R.P. 98/2019 the following order was passed:

“6. Since the maintainability of the present suit is in question in terms of Section 185 DLR Act, I deem it appropriate to dispose of the present petition with direction to the learned Additional District Judge to firstly decide the preliminary issue framed on 06.03.2019 before deciding any other application in the suit. Parties are directed to be present before the learned Additional District Judge on 15.05.2019 who shall fix date for deciding the preliminary issue expeditiously.”

It is now submitted by the learned counsel for the petitioner the order dated 23.04.2019 directed the learned Trial Court to first decide the preliminary issue framed on 06.03.2019 before deciding any other application in the suit. Nevertheless the application is decided first. It is pertinent to mention the main objections of the petitioner/defendant in this suit is the subject land is an agricultural land, hence suit for partition is not maintainable and on the other hand he is trying to raise construction.

Since this Court has directed the learned Trial Court to firstly decide the preliminary issues framed on 06.03.2019 so it be now decided and till then the status quo qua construction on the subject land be maintained. However the part of the impugned order which relate to the taking over of the physical possession of the property by

the SDM and/or preparing a report in this regard be kept in abeyance till further orders of the learned trial court.

The petition stands disposed of, pending application if any, also stands disposed of in terms of above.

Copy of this order be given *dasti* to the petitioner under signatures of the Court Master.

YOGESH KHANNA, J.

MAY 01, 2019

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