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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO (OS) 158/2019 & CM 37299/2019 (stay)

ARUN KHOSLA & ORS.

..... Appellants

Through: Mr Arun Khosla, Appellant No.1 in person along with Mr K. Gangadharan and Mr Jai Shankar, Advocates.

versus

JYOTSNA BHATIA

..... Respondent

Through: Mr Sachin Puri, Senior Advocate with Mr Pranav Kumar and Mr Kamal Khan, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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23.10.2019

1. The present appeal is directed against an order dated 24th July, 2019, passed by the learned Single Judge dismissing IA No.14147/2016, filed under Order X of the Code of Civil Procedure, 1908 ('CPC') by the present Appellants in CS(OS) No.361/2016, which was a suit filed by the Respondent against the Appellants, seeking partition of the property at B-98, Greater Kailash, Part-I, New Delhi – 110048 ('suit property').

2. The case of the Respondent is that the suit property is a self-acquired property of the father of the Respondent and that Appellant Nos. 1 and 2 are her brothers. Their father expired on 19th March, 1986. Their mother expired

on 29th April, 2000.

3. In the suit the Respondent has challenged a Will dated 9th August, 1984, executed by the father bequeathing the suit property to her brothers and mother, and a subsequent Will dated 31st July 1991, executed by the mother, bequeathing her share to the Appellant No.1. The Respondent claims that both these documents were illegal, forged and fabricated. The Respondent has also challenged the mutation of the suit property in favour of her two brothers i.e. Appellant Nos. 1 and 2 herein. She further seeks a declaration that a sale deed dated 13th June 2003, executed by Appellant No.2 in favour of Appellant No.3, the wife of Appellant No.1, purportedly selling the first floor of the suit property which fell to him, is also illegal and void, and ought to be cancelled.

4. In the said suit, the Appellants filed their written statement along with certain documents in original including the aforementioned Wills and affidavits purportedly executed by the Respondent. They also filed aforementioned application IA 14147 of 2016 under Order X CPC, praying that the Respondent should be examined in order to ascertain whether she admits the facts stated in the original documents filed along with the written statement.

5. The plea in the said application is that the Respondent had filed an affidavit of no objection to the mutation of the ground floor suit property in favour of the Appellant No. 1 and the mother, and the first floor in favour of the Appellant No.2, and further that, in one of the Wills executed by the mother, the Respondent/Plaintiff and her husband were witnesses; that when

the first floor was purchased by Appellant No. 3 from Appellant No.2, the Respondent /Plaintiff, again submitted an affidavit of ‘no objection’ in support of the consequent mutation.

6. The learned Single Judge noted that in the affidavit of admission/denial of documents filed in the suit, the Respondent denied her signatures on all of the aforementioned documents. The learned Single Judge was of the view that since the Respondent had, not only in the pleadings, but in her admission/denial, categorically denied the documents purported to bear her signatures, there was no ambiguity in her stand that would require clarification and for which the powers under Order X CPC were required to be invoked. The learned Single Judge was also not inclined to undertake the exercise of comparison of signatures of the Respondent in the plaint and the aforementioned documents or to put questions to the Respondent in relation to such documents under Section 73 read with Section 165 of the Indian Evidence Act, 1872 (‘EA’).

7. Appellant No.1, who appears in person, submitted that the learned Single Judge erred in declining to entertain the Appellants’ request for the Respondent to be examined under Order X Rule 2 (2) CPC since that would have avoided needless and protracted litigation. He placed reliance on the decisions in *K.S.Satyanarayana v. V. R. Narayana Rao (1999) 6 SCC 104*, *Murari Lal v State of Madhya Pradesh (1980) 1 SCC 704* and *Ajit Savant Majagavi v State of Karnataka (1997) 7 SCC 110*. Reliance was also placed on the decisions in *Ritesh Tewari v State of UP (2010) 10 SCC 677* and *State of Rajasthan v Ani @ Hanif (1997) 6 SCC 162* to urge that there were

sufficient powers under Section 165 EA for the Court itself to put questions to the Respondent in regard to her signatures on the original documents filed along with the written statement, and which would have brought out the falsity of her case.

8. It must be noted at this stage that Mr Sachin Puri, learned Senior counsel appearing for the Respondent raised a preliminary objection as to the maintainability of the present appeal on the ground that the impugned order is not an appealable one. However, since for reasons hereafter stated the Court does not find any merit in the present appeal, the question of its maintainability is left open for decision in an appropriate case.

9. The power of the Court to orally examine a party in terms of Order 10 Rule 2 (2) CPC is a discretionary one. The purpose of exercise of power under Order X CPC is for the Court to ascertain the stand of the parties in relation to the questions that arise in the dispute, and where such stand is not clear. In other words, if the Court is not clear as to the stand of the parties in relation to a particular aspect, it can directly put questions to the party to narrow down the scope of the dispute.

10. Having examined the decisions cited by Appellant No.1, the Court is not persuaded that in the present case, the learned Single Judge erred in concluding that there was no occasion to invoke the power under Order X Rule 2 (2) CPC. Even as regards comparison of signatures, the stage for the Court to do so had not been reached. The learned Single Judge was of the view that the Plaintiff should have an opportunity to prove that the

signatures purported to be hers, were indeed not hers.

11. The powers under Section 165 EA, although excerciseable at any stage of the proceedings, is again a matter of the discretion of the Court. This Court is not persuaded that the learned Single Judge was, in the facts and circumstances of the present case, in error in declining to exercise such discretion at this stage.

12. No grounds have been made out for interference with the impugned order of the learned Single Judge. The appeal is accordingly dismissed. The pending application is also disposed of.

13. It is clarified that no observation made in this order, or in the order of the learned Single Judge on the merits of the case, would influence the final decision in the suit.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 23, 2019

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