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

Date of Decision: 11th September, 2019

+ **CM (M) 842/2018 & CM APPL. 29560/2018 (stay)**

ANIL KUMAR GOEL

..... Petitioner

Through: Mr. Bharat Bhushan Dhingra and Mr.
Ravindra Khanna, Advocates.
(M:9899210024)

versus

REKHA GOEL & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The impugned order dated 31st May, 2018 has been passed by the Ld. ADJ in the suit filed by the Petitioner-husband (*hereinafter*, 'Plaintiff') against his wife – Respondent No.1/Defendant No.1 (*hereinafter*, 'Defendant No.1') seeking declaration, cancellation of documents, permanent and mandatory injunction. The case of the Plaintiff – Mr. Anil Kumar Goel is that the suit relates to property bearing No.4579, Gali Nathan Singh, Pahari Dhiraj, Delhi admeasuring 90 Sq. Yards. The same was owned by his mother through a registered sale deed, which is registered with the Sub-Registrar, Delhi. The mother of the Plaintiff - Smt. Pushpa Aggarwal has passed away on 1st March, 1991 leaving behind four children and her husband. It is further the case of the Plaintiff that the wife/Respondent No.1 had fraudulently got certain documents executed by his father – i.e., her father in law - transferring the property in her favour. These documents are challenged in the suit filed by the Plaintiff-husband.

2. By the impugned order, the Id. ADJ has transferred the suit seeking reliefs of cancellation of documents and injunction to the Family Court on the ground that the same is covered under Section 7(1)(c) of the Family Courts Act, 1984 (*the 'Act'*). The reasoning given by the Id. ADJ is that the suit filed by the Plaintiff is covered under Section 7(1)(c) of the Act. This order of the Id. ADJ has been impugned before this Court. Id. counsel for the Plaintiff relies upon the judgment of Kerala High Court in ***Krishnan Nambudiri v. Thankamani, II (1994) DMC 223***, wherein the Court has held that if there are other claimants to the property, then the same would not be covered by Section 7(1)(c) of the Act.

3. A perusal of the impugned order, as also the judgement cited by Id. counsel for the Plaintiff, clearly, shows that unless and until the property belongs to either of the spouses or it is jointly owned by them, the same would not be covered under Section 7(1)(c) of the Act. In fact, the Kerala High Court has relied upon the judgment of the Supreme Court in ***V. L. N. S. Temple v. I. Pattabhirami, AIR 1967 SC 781*** wherein it is categorically held that if there are other claimants to the property, the same would not be covered by the said provision.

4. Id. counsel for the Plaintiff has also informed the Court that both the sisters of the Plaintiff have also challenged the documents executed by their father in favour of Defendant No.1 and the said suit is also pending before the District Court.

5. A perusal of the pleadings in this suit, clearly, reveals that the mother, who was the original owner of the suit property, has left behind five legal heirs including her husband. The admitted position is also that the mother has died intestate. Accordingly, the question, as to what is the share of the

various siblings in the suit property, would have to be adjudicated by the Civil Court and the dispute is not purely between husband and wife, as to be adjudicated by the Family Court. The Kerala High Court in **Krishnan Nambudiri (supra)** has held as under:

“The general principle is, every presumption should be made in favour of the jurisdiction of a Civil Court. In other words, the exclusion of jurisdiction of the Civil Court cannot be readily inferred. Exclusion of jurisdiction of the Civil Court should be either explicitly expressed or clearly implied. In the decision in Abdul v. Bhawani (AIR 1966 SC 1718) the Supreme Court observed :

"It is settled principle that it is for the party who seeks to oust the jurisdiction of a Civil Court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a Civil Court must be strictly constructed."

In the decision in V.L.N.S. Temple v. I. Pattabhirami (AIR 1967 SC 781) also this principle is reiterated. Clause (c) of the Explanation to Sec.7(1) of the Act takes into its fold, a suit or proceeding between the parties to a marriage with respect to the property of the parties or either of them. Therefore, it is not enough that the suit is between the parties to the marriage; but the same should be with respect to the property of the parties or of either of them. Here, the subject matter of the suit belongs not only to the parties to the marriage, the plaintiff and the first defendant, but belongs to others also. In the context, it is necessary to remember that it is the contention of the first defendant-revision petitioner that his sisters are also entitled to a share. When contention is others are also interested in the subject matter of the suit like a suit for partition and they are also in the party array, simply because among the parties a husband and wife

are also arrayed on rival sides that cannot attract Clause (c) of Explanation to Section 7(1) of the Act.”

6. Notice was issued in this petition on 6th December, 2018 and an interim order was also passed staying the order dated 31st May, 2018. Notice was served upon the Respondents in the petition, however, there is no appearance. Ld. counsel for the Plaintiff submits that Defendant No.1 resides in the same premises as the Plaintiff. The Defendants, it appears, are not interested in appearing in the matter and have not put in appearance despite service.

7. In view of the settled legal position, since the siblings of the Petitioners are also claiming rights in the suit property, and it is not solely between the husband and wife, it is held that the impugned order is contrary to law and is contrary to Section 7(1)(c) of the Family Courts Act. The same is, accordingly, set aside. The suit shall be retained before the competent Court i.e. ADJ-01, Central District, Tis Hazari Courts, Delhi. The suit shall proceed in accordance with law.

8. The petition and the pending applications are disposed of in the above terms. *Dasti.*

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 11, 2019/dk