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

Date of decision: 11th December, 2019

\+ **CM (M) 944/2018 and CM APPL. 33101/2018**

DINESH DAYAL ..... Petitioner

Through: Mr. Vivek B. Saharya, Advocate (M: 9811156831).

versus

YOGESHWAR DAYAL (SINCE DECEASED) THR LRS & ORS ..... Respondents

Through: Mr. Arun Kumar Verma, Sr. Advocate with Mr. Akshay Bhandari and Mr. Digvijay Singh, Advocates for R-1 and 2 (M: 9911225571).

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. The present petition challenges the impugned order dated 18th July, 2018, by which the Petitioner's application under Section 151 CPC, for transfer of the suit to the High Court has been dismissed by the ld. Trial Court.

2. The brief background is that a suit for partition and *mesne* profits, titled *Shri Yogeshwar Dayal and Anr. v. Mr. Mahinder Dayal and Ors.*, was filed by Respondent Nos. 1&2/Plaintiffs *(hereinafter, "Plaintiffs")* in 2002, seeking partition of various properties forming part of the estate of Late Shri. Pannu Lal. The prayer in the suit reads as under: -

> *"In the aforesaid facts and circumstances of the case, it is most humbly prayed that this Hon'ble Court may be pleased to:*

i) Pass, a decree dissolving the HUF known as 'Shri Rameshwar Dayal and Brothers' and decree the partition of all the suit properties including those described in paras 3 and 4 above by metes bounds and direct that the Plaintiffs be put into separate possession of their 1/4 share of the suit properties

ii) Direct the Defendants to pay to the Plaintiffs a minimum sum of Rs 50,000/- per month with effect from the date of the suit and fix payment by way of mesne profits and decree that the Defendants are jointly and severally liable to compensate the Plaintiffs as aforesaid.

iii) Award costs of the suit to the Plaintiffs and against the Defendants.

iv) Award damages against Defendant No.1 for damages and loss caused by him to the HUF properties acting as Karta and on account of his acts of omission and commission.

V) Pass any further order and direction as this Hon'ble Court may deem fit and appropriate."

3. Written statements were filed by various Defendants, including the Petitioner herein. After considering the written statements and the stand of the various parties, a preliminary decree was passed vide order dated 14th March, 2017. The operative portion of the preliminary decree reads as under: -

"Present suit has been filed in the year 2001 therefore Hindu Succession (Amendment) Act 2005 would not apply and Hindu Secession Act 1956 as it stood before 2005 would apply. Therefore, the date of opening of partition is the date when the suit was instituted and accordingly admitted HUF properties shall be divided equally among all male coparcenors as were alive on the date of opening of partition as per Mitakshra's rules of distribution of property. Since four branches

were existing at the time of institution of the suit, therefore plaintiff's branch is entitled to 1/4th share in the admitted properties so are the branches of Mahinder Dayal Rameshwar Dayal and Rameshwar Dayal. The admitted HUF properties are:-

a. Properties No. 78, 79, 80 and 81, Chawri Bazar, Delhi

b. Property No. 1869, Haveli Jugal Kishor Ghantewala Gali, Chandni Chowk, Delhi

c. Property No. 96, Babar Road, New Delhi.

Accordingly preliminary decree of partition is hereby passed holding that branches of Yogeshwar Dayal, Mahinder Dayal, Maheshwar and Rameshwar Dayal each are entitled to 1/4th share in the admitted HUF properties i.e. (i) properties No. 78, 79, 80 and 81, Chawri Bazar, Delhi, (ii) property No. 1869, Haveli Jugal Kishor Ghantewala Gali, Chandini Chowk Delhi and (iii) property No. 96, Babar Road New Delhi."

4. The above preliminary decree has not been challenged by any of the parties. The suit was initially filed on the Original side of this Court but was transferred to the ld. District Court, owing to an increase in the pecuniary jurisdiction. After transfer took place, the preliminary decree was passed. While the suit was pending in the ld. District Court, an application under Order VII Rule 11 CPC was filed by the Petitioner/Defendant No. 6 *(hereinafter, "Defendant No.6")* before the ld. Trial Court, seeking rejection of the plaint on the ground that the properties have been undervalued in the plaint, in view of which, the suit is liable to be rejected. The said application was rejected by the ld. Trial Court vide order dated 19th April, 2018. This order, dismissing the application under Order VII Rule 11 CPC was challenged in C.R.P. 109/2018. Vide order dated 22nd May, 2018, the said petition was dismissed as withdrawn in the following terms: -

> *"After some hearing, the counsel for the petitioner submits that he is under instructions to request that he may be permitted to withdraw the present revision petition and the applications filed therewith, directed against the order dated 19.04.2018 of the additional district judge, passed on the file of the civil suit (No.169/2016, New No.16510/2016) whereby his application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) was dismissed, as the petitioner instead reserves the right to raise the objections as to the valuation of the reliefs claimed in the suit filed by the opposite party by appeal against the preliminary decree passed on 14.03.2017 also possibly seeking return of the plaint, in accordance with law.*
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> *The revision petition and the applications filed therewith stand dismissed as withdrawn. The petitioner may pursue the remedies as aforesaid, subject to its permissibility under law."*

5. Thereafter, Defendant No. 6 filed an application under Section 151 CPC. In effect, the case of Defendant No. 6 in the application is that the total valuation of the properties in the suit is more than seven crores and accordingly, the suit deserves to be transferred back to the High Court. The said application was rejected vide the impugned order dated 18th July, 2018. The present petition, challenging the impugned order dated 18th July, 2018, was listed before this Court and on 4th September, 2018, the following order was passed: -

> *"Initial submissions have been made on behalf of the petitioner.*
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> *Whilst assailing the impugned order inter alia reliance is placed on behalf of the petitioner on proceedings dated 22.05.2018 in CRP 109/2018 submitting to the effect that the petitioner herein had*

been permitted to raise objections as to the valuation of the reliefs claimed in the suit filed by the opposite party i.e. the respondent herein.

Vide the present petition, the petitioner seeks recalling of the records of the suit to this Court and for proceedings to be conducted in this Court in CS 16510/2016 pending in the Court of the learned ADJ-08, Central, THC, New Delhi.

Notice of the petition and of CM APPL. 33101/2018 be issued to the respondent on taking of steps by the petitioner, process returnable on 25.10.2018, till which date, the learned trial Court is directed not to pronounce any judgment in the matter.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed."

6. Mr. Vivek B. Saharya, ld. counsel appearing for Defendant No. 6, submits in support of the application under Order VII Rule 11 CPC, that the suit has been under-valued and the same is liable to be rejected, Defendant No. 6 has placed on record a large number of documents, including valuation reports of the various properties, which according to them show that the valuation of the properties is more than seven crores. Accordingly, it is submitted that the matter ought to be dealt with by the Original side of this Court. Ld. counsel submits that at the time of dismissal of the application under Order VII Rule 11 CPC, these documents were not considered by the ld. Trial Court and accordingly, the application under Section 151 CPC was moved, pursuant to liberty granted by this Court in the revision petition. It is further submitted that the correct procedure to be adopted by the ld. District Court was to place this matter before a District Judge to enable transfer to this Court.

7. On the other hand, Mr. Arun Kumar Verma, ld. Senior counsel representing the Plaintiffs, submits that the petition is nothing but a gross abuse of process inasmuch as the preliminary decree having not been challenged by Defendant No.6, Defendant No.6 ought to permit the ld. Trial Court to pass the final decree in accordance with law. By filing repeated applications, the intention is to ensure that the passing of the final decree is delayed. Ld. counsel relies upon the judgment of this Court in ***Sugandha Sethi v. Sudhir Puri and Anr. [CS (OS) No. 136/2009, decided on 10th April, 2012]***, to argue that the question of valuation of the properties and the court fee to be deposited by the various shareholders is to be determined upon passing of the final decree and not at this stage. It is submitted that the application under Order VII Rule 11 CPC would not be maintainable after the preliminary decree has been passed.

8. In rejoinder submissions, ld. counsel for Defendant No.6 submits that Defendant No.6 has not delayed the decision making by the ld. Trial Court and, in fact, arguments have been addressed in detail on various issues, including the pending applications under Order VI Rule 17 CPC and Section 2 of the Partition Act. Orders have been reserved by the ld. Trial Court.

9. Though various issues have been raised by the parties, the present petition is in a narrow compass. The only question is whether the ld. District Court could have transferred the suit to the High Court in an application under Section 151 CPC. The power of the ld. District Court, which initially passed the preliminary decree, would be to consider the rival contentions and to explore partition by metes and bounds and thereafter, if the same is not found feasible, to proceed in accordance with law. The preliminary decree having not been challenged by Defendant No.6, the application under

Order VII Rule 11 CPC, seeking rejection of the plaint having been rejected, such an application, would clearly not be maintainable in view of ***Sugandha Sethi (supra).*** In the said judgment, a ld. Single Judge of this Court has observed as under: -

> *"13. Later on, his father Samir Puri filed an application, being I.A. No.4998/2012, under Order VII, Rule 11 CPC for rejection of the plaint/CS(OS) No.136/2009 mainly on the ground that the said suit was not properly valued for the purposes of court fee and jurisdiction and proper and requisite court fee was not paid. The objection was also raised that his sister was not in possession of any of the portions of the property. She had to pay ad-valorem court fee and at least as per her share. According to him, she valued the suit property at Rs.50 lac in 2009 in her suit, therefore, as per her own admission, her share comes to Rs. 16,33,333/- and she be asked to first pay ad-valorem court fee on this amount.*
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> *14. No reply to this application has been filed by her. She relied upon the reply earlier filed on the same lines in I.A. No.16223/2009 filed by Samir Puri. The submission has been made that both the applications filed by the defendant No.2 are an abuse of process of law. The plaintiff continues to be in joint possession of the suit property, therefore, the plaint has been correctly valued for the purpose of court fee and jurisdiction. She has relied upon the case of* ***Umang Puri v. Lt. Col. Pramode Chandra Puri****, decided on 13.04.2009.*
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> *15. <u>As far as the valuation of the property is concerned, the plaintiff submits that the plaintiff is entitled to her 1/3rd share as per the market value of the suit property and not the amount referred to in the valuation clause in the plaint in the year 2009 and in any case if additional court fee is to be paid at the time of drawing final decree, she will pay as per directions</u>*

> *of the Court.*
> *16. By way of this common order, I propose to decide the pending applications, being I.A. No.4998/2012 in CS(OS) No.136/2009 filed by Samir Puri and I.A. No.4831/2012 in CS(OS) No.2954/2011 filed by Smt. Sugandha Sethi. Parties have made their rival submissions.*
> *17. Since a preliminary decree in the matter has already been passed, I am of the considered view that the applications under Order VII Rule 11 and 151 CPC raising the objection about Court fee filed by Samir Puri/defendant No.2 in CS(OS) No.136/2009 are misconceived and are not maintainable as the current valuation of the suit property has to be determined at the time of passing the final decree, the same have been filed by the defendant No.2 in order to delay the proceedings. The preliminary decree has been passed with the consent of the parties. The applications are therefore dismissed with cost of Rs.10,000/- which shall be deposited by Samir Puri/defendant No.2 in CS(OS) No.136/2009 with the Delhi High Court Advocates Welfare Fund within four weeks."*

10. Moreover, entertaining of the application by the ld. Trial Court is doing nothing but delaying the adjudication of the final suit and the passing of the final decree.

11. This Court is of the opinion that in an application under Section 151 CPC, the Trial Court cannot transfer the matter to the Delhi High Court, which is a Court of superior jurisdiction. The provisions for transfer of cases is governed by Sections 22 and 24 CPC. Neither of these provisions permit transfer of the suit by the Trial Court to the High Court in the manner as is sought to be urged.

12. The suit is more than 15 years old and deserves to be decided on an

early date. The applications filed by the parties under Order VI Rule 17 CPC and Section 2 of the Partition Act having been reserved for orders, the same shall be pronounced as soon as possible. Thereafter, the ld. Trial Court would endeavor to expeditiously pass the final decree in the matter. At the time of passing of the final decree, the valuation reports filed by Defendant No.6 shall be taken into consideration and the court fee to be deposited shall also be determined after the Court takes a view on the respective shares of the parties.

13. It is clarified that the pending applications shall be decided by the ld. Trial Court without being affected by the observations made in the present order.

14. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 11, 2019
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