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

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**C.R.P. 45/2020 and CM APPLs. 9313-15/2020**

**MADHU JAIN & ANR**

..... Petitioners

Through: Mr. Nalin Tripathi, Advocate (M:  
9810036122).

versus

**HEM CHAND JAIN & ORS**

..... Respondents

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**11.03.2020**

1. The present petition challenges the impugned order dated 20<sup>th</sup> August 2019 by which the preliminary issue in respect of the non-impleadment of the daughters of Mr. Ulfat Rai Jain has been decided by the Trial Court and the Trial Court has directed that the suit is not liable to be rejected due to non-joinder.
2. In the impugned order, the Trial Court has observed that the question of non-impleadment and whether the suit is liable to be dismissed in view of the same would require trial and cannot be summarily decided.
3. The suit for partition and the consequential relief of injunction was filed in 2008 amongst the family members of late Mr. Ulfat Rai Jain. Vide order dated 21<sup>st</sup> March, 2018, the Petitioners were impleaded as Defendant Nos. 5 and 6 in the suit. The issues originally framed in the suit vide order dated 26<sup>th</sup> September, 2008 are as under: -

*“1. Whether the suit is barred under the provisions of order 2 Rule 2 CPC? OPD-2.*

*2. Whether the suit property is properly valued for the purposes of court fee and jurisdiction? OPD-2*

3. *Whether the plaintiff is entitled for the preliminary decree of partition OPP.*
4. *Whether the plaintiff is entitled for decree of permanent injunction? OPP*
5. *Relief.”*

4. On 31<sup>st</sup> October, 2018, an issue in respect of the maintainability of the suit in view of the provisions of the Delhi Land Reforms Act, 1954 was also framed. The said issue reads as under: -

*“1. Whether the suit of the plaintiff is barred by the provisions of section 185 of D.L.R. Act as the suit property falls within the jurisdiction on the Revenue Estate of village najafgarh.”*

5. The Petitioners/Defendant Nos. 5 and 6 (*hereinafter, “Defendant Nos. 5 and 6”*) then filed an application seeking framing of additional issues under Order XIV Rule 5 CPC. On 27<sup>th</sup> March, 2019, further issues were framed in the matter and it was directed that the issue of non-joinder be treated as a preliminary issue. The said order reads as under: -

*“An application has been filed under order 14 Rule 5 CPC on behalf of defendant no. 5 and 6 seeking framing of additional issue. Reply to the said application has been filed by the plaintiff. Arguments on the application heard.*

*Ld. Counsel for defendant no. 5 and 6 submits that issues with respect to the limitation and non-joinder of necessary parties is required to be framed as all the LRs of Late of Late Sh. Ulfat Rai Jain have not been made parties to the present suit. He also submits that all the LRs. of Late Sh. Ulfat Rai Jain are necessary to be proper party. He also submits that the present suit is also barred by law of limitation as it has been filed after 33 years after the death of Ulfat Rai Jain. On the other hand Ld. Counsel for the plaintiff has opposed the application and submits that all the Lrs are no*

*objection certificate and in a suit for partition no limitation is prescribed.*

*I have heard Ld. Counsel for the parties and perused the record.*

*In the written statement filed by defendant no. 5 and 6 family tree has been clearly stated which facts has been admitted by the plaintiff in its replication and daughter of Late Sh. Ulfat Rai Jain have not been made a party to the present suit. Since plaintiff is seeking partition of the property of Ulfar Rai Jain therefore all the Lrs are the necessary party and hence additional issue is required to be framed and the same is framed as under-*

*Whether the suit of the plaintiff is barred for non-joinder of necessary party? OPD-5 and 6.*

*It was next contended by the Ld. Counsel for defendant no. 5 and 6 that the issue of the limitation is also required to be framed as specific objection has been taken by him in the written statement. He also relied upon the judgment of Kanak Late Jain Vs. Sudhir Kumar Jain RFA 232/11 decided on 24.02.2012. Although no period of limitation is prescribed in a onus to prove the said issue would off course be upon the defendant no. 5 and 6.*

*Whether the present suit is barred by limitation? OPD 4 & 5.*

*Application stands disposed off according. Issue no. 2 framed on 26.09.2008 and issue with respect to non-joinder of necessary party are treated as preliminary issues on **03.07.2019**.”*

6. After the passing of the order dated 27<sup>th</sup> March, 2019, the issue in respect of non-joinder was heard as a preliminary issue. Vide the impugned order dated 20<sup>th</sup> August, 2019, the Trial Court has held that the question as

to whether the daughters of Mr. Ulfat Rai Jain had given a no objection in favour of Respondent No.1/Plaintiff (*hereinafter, "Plaintiff"*) would have to be considered at trial and the said issue cannot be summarily decided. The observations of the Trial Court read as under: -

*"1. By this order, shall decide the preliminary issues as framed on 26.09.2008 and issue in respect of non joinder of necessary parties. The brief facts as necessary for disposal of the present application are that plaintiff had filed a suit of partition claiming that late Sh. Ulfat Rai Jain was the owner of the property as mentioned on Para 1 of the plaint and after his death the property devolved upon the plaintiff and defendants.*

*2. During the pendency of the suit Somarani Jain w/o Attar Sain Jain expired and her daughter namely Madhu Jain and Manju Jain were impleaded as the party. WS was filed on their behalf in which objection of non joinder of necessary parties was taken whereupon a preliminary issue was framed.*

*3. Ld counsel for plaintiff has argued that all the daughter of Ulfat Rai Jain are not necessary parties in as much as they have given no objection in favour of sons of late Sh. Ulfat Rai Jain. In my opinion, therefore it would be question of trail whether any much no objection has been given by the daughters of late Sh. Ulfat Rai Jain or not and it would be for the plaintiff to prove this fact. The issue cannot be summarily decided."*

7. Mr. Tripathi, ld. counsel for Defendant Nos. 5 and 6, submits that the suit, on the face of it, is not maintainable in view of the non-impleadment of the daughters of Late Mr. Ulfat Rai Jain. Ld. counsel submits that even if the daughters have given their no objection, the same ought to be confirmed once they are impleaded as Defendants and not without impleading them. It

is submitted that the averments in the plaint to the effect that the impleaded parties are the only legal heirs of Late Mr. Ulfat Rai Jain is a false statement and hence, the suit is bad for non-joinder. It is further submitted that the question of no objection having been issued by the daughters has also not been pleaded in the plaint. Ld. counsel relies upon the judgment of this Court in *Chela Ram Chopra (Thr LRs) v. Ramo Devi & Ors.* [RFA 704/200, decided on 5<sup>th</sup> July, 2010] and *Master Anant Narayan Rai & Anr. v. Siddharth Rai & Anr.* [CS(OS) 1737/2007, decided on 6<sup>th</sup> February, 2020].

8. This Court has perused the plaint as well as the orders. The suit has been filed in 2008 and has remained pending for almost 12 years. When the present Petitioners i.e., Defendant Nos. 5 and 6, were impleaded as Defendants in the suit, the prayer in their application under Order XIV Rule 5 CPC was only for framing of additional issues, including the issues on non-joinder/mis-joinder, valuation and limitation. The said prayer was considered and allowed by the Trial Court on 27<sup>th</sup> March, 2019. At no stage of the proceedings was impleadment of the daughters of Late Mr. Ulfat Rai Jain sought by Defendant Nos. 5 and 6.

9. At present, the Plaintiff's evidence is stated to have been concluded in the suit and the suit is at the stage of Defendants' evidence. It is at this stage that the prayer for impleadment of Late Mr. Ulfat Rai Jain's daughters is being urged or in the alternative for dismissal/rejection of the suit.

10. The question of impleadment and the consequences of the same would have to be adjudicated in the suit. The only issue is as to whether the plaint could have been rejected at this stage due to non-joinder of necessary parties. The Trial Court, vide the impugned order dated 20<sup>th</sup> August, 2019

has taken the view that the Plaintiff's reliance upon the no objections by the daughters would have to be proved in trial and cannot be summarily decided.

11. Considering the stage of the suit, i.e., when the trial is almost reaching conclusion, this Court is not inclined to entertain the present petition, especially since an issue on non-joinder has already been framed. If the Plaintiff chooses not to implead the daughters, the consequences in accordance with law would follow. The question as to whether the daughters have given a no objection and the effect thereof has to be considered by the Court. Moreover, the onus of proving non-joinder of necessary parties is on Defendant Nos. 5 and 6. The Plaintiff may even seek permission to file rebuttal evidence and thus, at this stage, it cannot be held that the suit is liable to be rejected. The same would be considered by the Trial Court as part of the issue relating to non-joinder of necessary parties. Considering the advanced stage of the suit, impleadment of the daughters at this stage would set the suit back in time. The effect of non-impleadment would be decided at the final stage.

12. Accordingly, leaving the issue of non-joinder of necessary parties and the consequences thereof open for adjudication before the Trial Court, the petition is disposed of. All pending applications are also disposed of. The observations made herein or in the impugned order shall not affect the final adjudication.

**PRATHIBA M. SINGH, J**

**MARCH 11, 2020**  
**MR/T**