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

+ **CM(M) 601/2018**

+ **CM(M) 696/2018**

KHEM SINGH, SINCE DECEASED THRO LRS Petitioner

Through: Mr. Sahil Batar, Advocate
(M:8920756651)

versus

S GURBAKSH SINGH BHASIN (DECEASED) THR HIS
LRS Respondent

Through: Mr. RPS Khalsa, Advocate for R-1&2
(M-9810024902)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **10.01.2020**

CM(M) 601/2018 & CM APPLs. 21177/2018, 33704/2018

1. The scope of the present petition is very limited. The petition arises out of a suit for partition amongst various family members. On 11th February, 2004, the following issues were framed in the suit:

“1. Whether the Plaintiffs are entitled to the partition as prayed for?

2. Whether the present suit appropriate and requisite court fees for the purpose of the valuation has not been paid? OPD

3. Whether there is a valid and legal Will in favour of the Defendants in respect of the suit property? OPD

4. Relief.

2. The Petitioners/Defendants (*hereinafter 'Defendants'*) have moved an application seeking framing of additional issues. The said application has been rejected by the following order dated 19th April, 2018:

"I considered the application under Order XIV Rule 5 of CPC of the LRs of the defendant no. 1 for framing of additional issues.

Following additional issues are requested to be framed by way of present application:

- *Whether the suit of the plaintiff is maintainable as framed on account of acquiescence and waiver on the part of the plaintiff?*
- *Whether the present suit is not maintainable in view of Section 7 of the Court Fees Act as well as Section 8 and 9 of the Suit Valuation Act?*
- *Whether the claim of the plaintiff and defendant no. 2 qua the suit property is barred by time?*
- *Whether the plaintiff is entitled to equitable relief of partition in the absence of any declaration qua deed of conveyance?*

It is settled proposition of law by catena of judgments that there is no limitation for filing a suit for partition. Therefore, issue to the effect that the claim of the plaintiff and defendant no. 2 qua the suit property is barred, can not be framed.

Since the deed of conveyance has been executed on the basis of Will and the Will has already been challenged in the present suit and issue no. 3 has already been framed challenging the Will and if it is held that there is no need of seeking declaration qua the deed of conveyance which has been executed on the basis of Will in question. Therefore, there is no need of framing of issue for seeking relief of declaration.

The issue with respect to the valuation of the suit and requisite court-fee has already been framed as issue

no. 2, therefore, there is no need of framing of issue that the suit is not maintainable in view of Section 7 of the Court Fees Act as well as Section 8 and 9 of the Suit Valuation Act.

Issue that whether the suit of the plaintiff is maintainable as framed on account of acquiescence and waiver on the part of the plaintiff is vague and if the suit is not maintainable on the ground of acquiescence and waiver on the part of the plaintiff as claimed by the LRs of defendant no. 1, that would be covered in issue no. 1.

The issues were framed in the present case on 11th February 2004. The present application has been moved on behalf of the LRs of the defendant no. 1 on 13th February 2018 i.e. after about 14 years. This case is of the year 2000. I am of the view that the present application has been moved by the LRs of the defendant no. 1 just to delay the proceedings. Therefore, I am of the view that such frivolous application must be dismissed with exemplary costs. Hence, the same is dismissed with costs of ₹50,000/-, out of which ₹10,000/- be paid to the plaintiff and ₹40,000/- be deposited in the DLSA, Central, THC, Delhi.

Now, case is adjourned for payment of costs and remaining DE for 03-05-2018.

Last and final opportunity is given to conclude the DE.”

3. A perusal of the issues already framed and the issues which are sought to be framed shows that one of the issues i.e. in respect of declaration would needs to be framed inasmuch as in the absence of declaration qua the deed of conveyance, it is the submission of the Defendants that the suit is not maintainable. Though there is no doubt that the conveyance deed is based on the Will dated 22nd February, 1992, the question of consequential

maintainability of the suit would require to be framed. Accordingly, the following additional issue is framed in the matter:

4. Whether the plaintiff is entitled to equitable relief of partition in the absence of any declaration qua deed of conveyance?OPD

5. Relief.

4. The original Will would have to be produced by the Defendants as the onus of issue no.3 lies upon the Defendants. The contention of the Respondents/Plaintiffs (*hereinafter 'Plaintiffs'*) is that the Will has already been held to be illegal and not genuine. The same shall be taken into consideration trial court. With these observations, the petition and all pending applications are disposed of.

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5. This petition arises out of orders dated 3rd May, 2018 and 17th May, 2018. Vide order dated 3rd May, 2018, the application seeking review of the order dated 19th April, 2018 was rejected. In CM 601/2018 above, the order dated 19th April, 2018 has been modified in the terms set out above. Thus, this challenge no longer survives.

6. The second impugned order in this case is order dated 17th May, 2018 by which the Defendant's evidence has been closed.

7. In view of the orders passed above, in respect of the issue which has been added, as also the fact that the Defendants are now seeking permission to lead evidence, last and final opportunity is granted to the Defendants to lead his evidence of two witnesses, subject to payment of Rs.20,000/- as costs to be paid to the Plaintiffs. The costs shall be paid on or before the next date before the Trial Court. The evidence shall be recorded expeditiously and the suit shall be finally adjudicated by the Trial Court. No

further application shall be entertained in the present matter.

8. The petitions and all pending applications are disposed of in these terms.

PRATHIBA M. SINGH, J.

JANUARY 10, 2020

Rahul