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

Date of decision: 18th November, 2021

+ **C.R.P. 73/2021 & CM APPLs. 37754/2021 & 37755/2021**

SH. VED PRAKASH

..... Petitioner

Through: Mr. Sandeep Garg, Advocate.
versus

MS. AASHI TANWAR & ORS.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 2nd March, 2021 passed by the Ld. ADJ, Tis Hazari Courts, Delhi (*hereinafter "Trial Court"*) in *C.S. No.503/2020* titled "*Aashi Tanwar v. Ved Prakash & Ors.*" By the impugned order, the application under Order VII Rule 11 CPC filed by the Petitioner, who was Defendant No.1 in the suit, has been dismissed by the Trial Court.
3. The suit was filed by Respondent Nos.1 & 2 who were the Plaintiffs seeking partition, possession and permanent injunction, in respect of property numbers WZ-375 Basai Darapur, Shivaji Marg, New Delhi measuring 250 sq. approx. and WZ-258, Basai Darapur, Shivaji Marg, New Delhi measuring 50 sq. yards (*hereinafter "suit properties"*). The claim of the Plaintiff is one-fourth of the share of the deceased- Sh. Ramesh Tanwar, also known as Sh. Ram Niwas. (*hereinafter "Ram Niwas"*)
4. The case of the Petitioner in the application under Order VII Rule 11

CPC is that the suit properties had been purchased way by the Petitioner from Sh. Ram Niwas way back in 2001. The plaint itself admits that the partition had taken place, and that the coparcenary itself ceased to exist after the death of Sh. Beg Ram and the partition of the coparcenary.

5. According to Mr. Sandeep Garg, Id. Counsel for the Petitioner, the documents which are on record are sufficient to establish that the suit itself is not maintainable and, therefore, the present petition seeks setting aside of the impugned order whereby the application for the rejection of the plaint has been dismissed.

6. The Court has perused the impugned order dated 2nd March, 2021 passed by the Trial Court. The Trial Court has, in effect, held that the Petitioner had claimed rights from Sh. Ram Niwas who had allegedly sold the property to the Petitioner on 5th June, 2001. Thereafter, it was further, sold to Mr. Akash Panwar and Ms. Bhawna on 9th November, 2020.

7. On a query from the Court. Mr. Garg, Id. Counsel fairly submits that the documents dating back to 2001 are not registered documents, and were merely notarised. However, the documents executed on 9th November, 2020 are registered. The Court has held that the documents on the basis of which title was transferred by the Sh. Ram Niwas were not placed on record. Since the said documents were not filed, the Trial Court holds that the Plaintiffs and Defendant No.1/Petitioner herein are entitled to a share in the property. In paragraph 15 of the impugned order, the Trial Court comes to a conclusion that the Plaintiffs have established the right, title and interest being the *nati* i.e., the daughters of Ms. Anita, who is one of the legal heirs of Sh. Ram Niwas.

8. This Court is of the opinion that the reasoning given by the Trial

Court, at the stage of the Order VII Rule 11 CPC application, cannot be faulted with. The said application cannot be decided in a manner, as though the documents filed on record are considered to have been proved. At the stage of deciding an application under Order VII Rule 11 CPC, the Court is to merely look into the plaint and the documents filed therewith, to ascertain as to whether there is any cause of action. In the present case, the manner in which the title is being claimed by the Petitioner shows that evidence would be required to be adduced, in order to ascertain as to whether the Petitioner's case is tenable or not. Thus, the suit could not have been rejected under Order VII Rule 11 CPC. Accordingly, the present revision petition is dismissed.

9. However, it is clarified that the observations in the impugned order dated 2nd March, 2021 shall be considered to be observations only for the purposes of the application under Order VII Rule 11 CPC, and the same shall not bind the final adjudication of the suit, once evidence is led in this matter.

10. In view of the fact that the suit was filed in 2020, and the pleadings are stated to have been completed, the Trial Court shall frame issues in respect of the objections raised by the Petitioner/Defendant No.1, and attempt to expeditiously dispose of the suit, in any case, within one year.

11. With these observations, the present petition, along with all pending applications, is dismissed.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 18, 2021
dj/ad