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

*Date of decision:*27.07.2023

+ **CM(M) 1570/2019 & CM APPL. 44029/2022, 44031/2022, 51818/2022 & 51819/2022**

VIJAY KUMAR MALHOTRA ..... Petitioner  
Through: Mr.Anindya Malhotra,  
Mr.Rishabh Goel & Ms.Deepti  
Gulati, Advs.

Versus

VIPIN KUMAR & ANR ..... Respondents  
Through: Mr.Vipin Kumar, R-1 in  
person.  
Mr.Gaurav Kumar, Adv. for R-  
2.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the orders dated 20.10.2018 and 04.07.2019 passed by the learned Civil Judge-05, Central, Tis Hazari Courts, Delhi in Suit bearing No. CSSCJ No. 99819/2016 titled ***M.M. Malhotra v. Vipin Kumar & Anr.***

2. The petitioner herein is the defendant no.2 in the said suit. The said suit has been filed by the respondent no.2 herein, praying *inter alia* for a Decree of Declaration that the Decree dated 25.04.2009, passed by the Court of the learned Additional District Judge, Delhi in Suit no. 182/2005 titled ***Vipin Kumar v. V.K. Malhotra*** be declared as null and void.

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3. The suit filed by the respondent no.2 herein is premised on the assertion that the Decree dated 25.04.2009 has been passed with respect to a property which, in fact, belongs to the respondent no.2 on partition between the petitioner herein and the respondent no.2 herein, who are the real brothers.

4. In the said suit, the petitioner herein filed his written statement admitting that the respondent no.2 herein is the owner of the property, which otherwise is the subject-matter of the Decree dated 25.04.2009, thereby supporting the case of the respondent no.2, the plaintiff in the suit. As the petitioner was supporting the case of the respondent no.2, the respondent no.1 herein, who is the defendant no.1 in the said suit and in whose favour the Decree dated 25.04.2009 has been passed, filed an application seeking permission to cross-examine the petitioner herein. The said application was allowed by the learned Trial Court, observing as under:-

*“11. What is apparent from the perusal of the pleadings of the parties and from above discussion is that the interest of defendant no.1 is adverse to the interest of his co-defendant i.e. defendant no.2. Further, the pleading of defendant no.2 appears to support the pleading of the plaintiff as much as he admits that the suit property belongs to the plaintiff and not to him. Thus, the interest of defendant no.1 and that of defendant no.2 appears to be adverse to each other. In these circumstances, court is of the opinion that defendant no.1 is entitled to cross examine defendant no.2, who has stepped into the witness box as a witness. As such, defendant no.1 is found entitled to the opportunity to cross examine defendant no.2, with a view to demolishing the case of defendant no.2, which is supportive of the case*



*of the plaintiff on the point of ownership over the suit property.”*

5. The petitioner herein filed an application seeking review of the above order, which has been dismissed by the learned Trial Court by the Impugned Order dated 04.07.2019.

6. The learned counsel for the petitioner submits that the Impugned Orders are liable to be set aside inasmuch as they fail to appreciate that challenge to the Decree dated 25.04.2009, passed in the suit filed by the respondent no.1, is pending adjudication in an appeal before this Court, being RFA No. 199/2009, and that there is a stay on the execution of the said Decree. He submits that, in case, the respondent no.1 is allowed to cross-examine the petitioner, he may try to create evidence in support of the said appeal, thereby prejudicing the case of the petitioner in the said appeal. He submits that, therefore, the respondent no.1 cannot be allowed to cross-examine the petitioner.

7. I do not find any merit in the submission made by the learned counsel for the petitioner. It is not denied that the stand taken by the petitioner in the Suit supports the defendant no.2, who is the plaintiff in the suit. To that extent, therefore, the stand of the petitioner in the suit is adverse to the respondent no.1. The respondent no.1 is, therefore, entitled to cross-examine the petitioner. I, therefore, find no infirmity in the impugned orders.

8. The petition is accordingly dismissed. The petitioner shall pay a costs of Rs.5,000/- to the respondent no.1.



9. The pending applications are also disposed of.

**NAVIN CHAWLA, J**

**JULY 27, 2023/rv/ss**

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