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

+ **CM(M) 491/2019 & CM APPLs. 4221/2023, 4222/2023**

Date of decision: 09.10.2023

PARAMJIT KAUR & ORS

..... Petitioners

Through: Mr. Suruchi Aggarwal, Senior Advocate with Mr. Jatin Kumar and Mr. Manish Kumar, Advocates with Mr. Gurmeet Singh and Mr. Lucky Singh, Petitioners in person.

versus

BALDEV SINGH & ORS

..... Respondents

Through: Mr. M.G. Vacher and Mr. Harsh Vardhan Singh, Advocate with R-1 in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 10.01.2019 passed by the Additional District Judge-03, West District, Tis Hazari Court, Delhi in CS No. 1093/2017 titled as **Paramjit Kaur and ors. v. Baldev Singh and Ors.** ('Trial Court').

1.1 The Petitioners are the original plaintiffs and the Respondents are the original defendants in the civil suit.

1.2 The civil suit has been by the plaintiffs for partition, mesne profit, rendition of account and injunction against the defendants for the properties



(i) bearing no. 2254, Hudson Lane, Kingsway Camp, Delhi 110009; and (ii) the other bearing no. D-90, Phase 2, Mayapuri, New Delhi 110064. Both the suit properties are stated to be owned by late Shri Jaswant Singh, father-in-law of Petitioner No. 1 and grand father of Petitioner Nos. 2 and 3.

2. Vide impugned order dated 10.01.2019 the Trial Court has returned the following three findings which reads as under:

- i. The Trial Court has held that the plaintiffs do not have any right with respect to the property bearing no. D-90, Phase 2, Mayapuri, New Delhi 110064. The Trial Court after referring to the proceedings of civil suit no. 170/2012 held that late Shri Jaswant Singh partitioned the said property during his life time between defendant Nos. 1 and 2; and was therefore left with no right, title or interest.
- ii. The Trial Court has further held that in view of the two (2) gift deeds executed by late Sh. Jaswant Singh during his life time transferring his rights with respect to first and second floor with mezzanine floor and roof rights in property bearing no. 2254, Hudson Lane, Kingsway Camp, Delhi 110009 in favour of defendant Nos. 2, 3 and 4 respectively; late Shri Jaswant Singh was not left with any right, title or interest in the said property. Accordingly, the Trial Court held that, the plaintiffs herein do not have any rights in respect of these floors in the said Hudson Lane property.
- iii. The Trial Court concluded that late Shri Jaswant Singh was left with right, title and interest only in respect of the ground floor of the property bearing no. 2254, Hudson Lane, Kingsway Camp, Delhi 110009 ('ground-floor portion'). The defendant No. 1 has stated that late Shri Jaswant Singh executed a Will dated 07.01.2014 with respect to the ground floor portion and he has filed a probate petition for proving the said Will. Accordingly,



the Trial Court has held that the rights, if any, of the plaintiffs with regards to the ground floor portion will be determined after the final adjudication of Probate Case bearing no. 07/2017 wherein the Respondent No.1 has propounded a will dated 07.01.2014 and the validity whereof is pending adjudication therein. Accordingly, till adjudication of the probate petition, the proceeding before the Trial Court in the said civil suit shall remain stayed so as to avoid conflict of judgements.

3. At the outset, learned senior counsel for the Petitioners states that with respect to the aforesaid findings of the Trial Court at Serial. No. (i) and Serial. No. (ii), the Petitioners herein are not pressing or challenging the same in the present petition; and Petitioners will avail their statutory remedy with respect to the said findings by filing an appropriate petition under the provisions of Code of Civil Procedure, 1908 (CPC).

4. However, with respect to findings of the Trial Court as stated at Serial. No. (iii) she prays that the aforesaid civil suit be heard with the Probate Case bearing no. 07/2017, since the subject property i.e., ground floor portion is common in both the cases. She further states that the hearing in the suit be not stayed and the evidence be recorded simultaneously.

5. This Court has considered the submissions of the counsel for Petitioner and perused the record.

6. The challenge in this petition is therefore, limited to the stay of further proceedings in the civil suit pending the final determination of the probate petition.

7. A copy of the order dated 21.04.2018 framing issues in the civil suit has been placed before this Court by Respondent No. 1. In view of the findings returned by the Trial Court at Serial Nos. (i) and (ii), the issue nos.



4 and 5 stand decided. Similarly, in view of the finding at Serial No. (iii), issue No. 1 also stands decided.

8. There is no dispute with respect to the title of late Shri Jaswant Singh to the ground floor portion. Therefore, in the opinion of this Court, the remaining issue nos. 2, 3 and 6 can await the outcome of the probate petition and no prejudice will be caused to the plaintiffs.

9. However, this Court is of the opinion that in order to allay the concerns of the Petitioners and obviate any prejudice to the parties; this Court deems it appropriate that the civil suit No. 1093/2017 is transferred to be heard and decided by the Additional District Judge – 02, West District, Tis Hazari Court, Delhi (‘concerned Court’) which is hearing the Probate Case bearing no. 07/2017 titled as **Baldev Singh vs. State & Ors.**

9.1. The subject matter of the civil suit in the Probate Petition is admittedly (for the present) limited to the devolution of title in the ground floor portion and therefore, it is appropriate that the same Court hears and adjudicates the matters. The parties claiming rights in the ground floor portion are same in both these proceedings. The Probate Court is competent to try the civil suit.

10. It is directed that the hearing of the civil suit with respect to the issue of devolution of title in ground floor portion will be taken up after the decision of the Probate Case bearing no. 07/2017.

11. The statement made by the learned senior counsel for the Petitioners as noted at paragraph ‘3’ is taken on record and Petitioners are bound down to the same. However, it is made clear that the appropriate petition, if filed will be decided by the said forum in accordance with law. It is clarified that this Court has not examined the merits of the challenge to the said findings



of the Trial Court in this petition

12. It is, however, made clear that in case the Petitioners avails their statutory remedy of impugning the findings stated at Serial No. (i) and (ii) hereinbefore; and succeeds therein, then Petitioners will be at liberty to seek modification of the direction of the stay of adjudication of the civil suit as directed in paragraph '10' above.

13. The District Judge is directed to pass appropriate orders for transferring the civil suit No. 1093/2017 pending before ADJ-03, West District, Tis Hazari Court, Delhi to the Court of ADJ-02, West District, Tis Hazari Court, Delhi. The direction for transfer of the civil suit has been issued with the consent of the counsel for the Petitioners and Respondent no. 1.

14. With the aforesaid directions, the present petition is disposed of.

15. The concerned Court is at liberty to proceed with the Probate Case bearing no. 07/2017 listed before it on 12.10.2023.

16. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 09, 2023/msh/ms

Click here to check corrigendum, if any