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

Date of decision:08.08.2023

+ CM(M) 1263/2023 & CM APPLs. 40381-82/2023

MRS KAMLESH & ORS.

..... Petitioners

Through: Mr. Vaibhav Sinha, Advocate.

versus

MOHAN THAKUR & ORS.

..... Respondents

Through: Mr. Tarun, Advocate.
Mr. H.K. Dhariwal, Advocates for R-
2 and 7.

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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):

CM APPL. 40382/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

CM(M) 1263/2023 & CM APPL. 40381/2023

1. This petition impugns the order dated 05.07.2023 passed by the Additional District Judge – 01, District North West, Karkardooma Courts, Delhi in Case No. 139/2020, titled as **Mohan Thakur VS. Lalita Devi & others** ('Trial Court') whereby the Trial Court has dismissed the Petitioners' application under Order XIV Rule 5 read with Section 151 Code of Civil Procedure, 1908 ('CPC') for framing of additional issues.



1.1. The Petitioners herein are the original defendant nos. 6, 8, 9, 10 and 11 in the civil suit. The Respondent No.1 is the original plaintiff in the civil suit. Respondent Nos. 2 to 7 are defendant nos. 1 to 5 and 7 in the civil suit.

1.2. The civil suit has been filed by Respondent No. 1 for partition of the property against the Petitioners and Respondent Nos. 2 to 7 herein.

2. After some arguments, learned counsel for the Petitioners states that at the outset, in this petition the Petitioners herein is seeking a limited relief to the extent that an issue with respect to maintainability of the suit filed by the plaintiff be framed in view of the objections raised by the Petitioners i.e., defendants at paragraph 3 under the heading 'reply on merits' of the written statement. The relevant paragraph reads as under:

"3. That the Contents of Para No. 3 of the Suit is partially correct as Late Sh. Ram Phool Singh Thakur also had following properties to be partitioned:-

- *Shop No. 10, Opposite PNB Bank, Johripur, Main Road, Delhi –110094*
- *Property behind Shop No. 10, Johripur, Delhi – 110094*
- *Assets and Income of M/S Protective Security & Placement Services (A Joint Family Business)"*

3. He states that the plaintiff has filed the civil suit for partition only with respect of one of the immovable property of late Shri Ram Phool Singh Thakur i.e., House no. A/36, Adarsh Gali, Johripur, North East Delhi. He states that the plaintiff has failed to include the remaining assets of late Shri Ram Phool Singh Thakur, which have been enlisted at paragraph 3 of the written statement.

4. In reply, learned counsel for Respondent No.1 states that the issues in the matter were framed on 20.09.2022 and in the presence of the counsel for the Petitioners herein. He states no objection was raised then and the present application was filed belatedly at the stage when the plaintiff's witness was to be cross examined by the Petitioners herein.



5. He states that the order of the Trial Court is correct to the effect that the relief of partition, if any, with respect to the properties mentioned at paragraph 3 of the written statement cannot be asked for in the suit filed by Respondent No.1 as no counter claim or an independent action has been brought by Petitioners herein for the partition of the said properties.

6. He states that Respondent No.1 herein disputes the assertion of the Petitioners that the properties mentioned at paragraph 3 of the written statement belong to late Shri Ram Phool Singh Thakur. He states that the said properties are the personal assets of Respondent No.1 and no documents have been filed by the Petitioners herein in support of the averment that the said assets belong to late Shri Ram Phool Singh Thakur.

7. Learned counsel for Respondent Nos. 2 to 7 adopt the arguments of the learned counsel for the Respondent No.1. He states that in the suit proceedings before the Trial Court, Respondent Nos. 2 to 7 have already got their no objection recorded in favour of Respondent No.1.

8. He states that Respondent Nos. 2 to 7 have no concern with the properties enlisted in the written statement of the Petitioners herein.

9. In response, learned counsel for the Petitioners states that he reserves his right to file an independent suit of partition with respect to the properties mentioned in paragraph 3 of his written statement or file a counter claim in accordance with law.

10. He states in the present petition, he is seeking a limited relief with respect to framing of additional issue with respect to the maintainability of the suit on the plea raised in the written statement. He states that the onus with respect to the said issue will necessarily lie on the Petitioners herein i.e., the defendants.



11. Accordingly, with the consent of the parties, the following issue is framed:

- i. Whether the suit by the plaintiff is maintainable in view of the fact that the other properties owned by late Shri Ram Phool Singh Thakur, as enlisted in paragraph 3 of the written statement of defendant nos. 6, 8, 9, 10, 11, have not been included in this suit for partition? OPD.

12. It is directed that the onus to prove the said additional issue shall lie on the defendant nos. 6, 8, 9, 10 and 11 in the first instance; and after the said defendants have concluded their evidence, the plaintiff will have a right to lead rebuttal evidence for the said issue, if so advised.

13. The order of the Trial Court dated 05.07.2023 is upheld except to the extent of the framing of the aforesaid additional issue.

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

MANMEET PRITAM SINGH ARORA, J

AUGUST 8, 2023/msh/ms

Click here to check corrigendum, if any