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

Date of decision: 17.10.2023

+ CM(M) 1705/2023 & CM APPL. 54061/2023

SMT RAJ BALA & ANR

..... Petitioners

Through: Mr. Vipin K. Singh and Mr. Dipanshu
Kaushik, Advocates

versus

SMT MAYA DEVI & ORS

..... Respondents

Through: None

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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. 54060/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1705/2023 & CM APPL. 54061/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 21.09.2022 passed by the Principal District & Session Judge, South-West District, Dwarka Courts, Delhi ('Trial Court') in TP No. 32/2022 titled as "**Raj Bala & Anr v. Maya Devi & Ors**" whereby, the Trial Court dismissed the transfer application filed by the Petitioner herein under Section 24 of the Code of Civil Procedure, 1908 ('CPC').

2. The learned counsel for the Petitioner states that the Petitioner herein had filed a suit for injunction for removal of a wall illegally raised by the Respondents at property bearing No. 1208 and 1209 situated in the extended abadi of village Kapashera, New Delhi ('subject property').



2.1. He states that the said suit was dismissed by the concerned civil Judge and the appeal filed by the Petitioner is now pending before the Senior Civil Judge, South-West, Dwarka Courts, New Delhi ('Senior Civil Judge'). He states that the said appeal is listed in December, 2023.

2.2. He states that the Petitioner herein filed a separate suit for partition of the same subject property and the same is pending before ADJ-01, South-West, Dwarka Court, Delhi ('Additional District Judge'). He states that the defendant evidence has been closed and now the suit is listed for final arguments in January, 2024.

2.3. He states that no prejudice will be caused to the Respondents, if both these proceedings are heard and tried by the same Court.

3. This Court has heard the learned counsel for the Petitioner and perused the record.

4. The impugned order is dated 21.09.2022. The present petition has been filed after 13 months challenging the order of the District Judge dismissing the transfer petition. The operative part of the order dated 21.09.2023 reads as under:-

"I, however, feel that the contention raised in this regard is somewhat misplaced. The appeal is in context with injunction matter and even if subject property remains the same, it cannot be said that such appeal and the suit for partition should be considered by one and the same court. Things would have been different had the suit for injunction would have also been pending. I therefore, do not find any real necessity in ordering for withdrawal of the appeal from the court of Ld. Senior Civil Judge in the present peculiar factual matrix. Therefore, transfer application is dismissed.

However, before parting, I would like to submit that it will always open to appellant to make a request before the Ld. Senior Civil Judge that her appeal may be kept in abeyance till the outcome of partition suit is known.

A copy of this order be sent to court of Ld. Senior Civil Judge, South-West for information."

(Emphasis Supplied)



5. The Petitioner during the course of the arguments fairly admitted that relying upon the leave granted to the Petitioner in the impugned order, the appeal pending before the Senior Civil Judge has been kept in abeyance and no final orders have been passed therein.
6. This Court is of the opinion that the Petitioner has acted upon the said order and there is no ground furnished in the arguments for filing of this petition belatedly.
7. This Court finds no justification for transfer of the appeal from the Court of Senior Civil Judge to the Court of Additional District Judge.
8. The cause of action arising for consideration of Court in both the suits are distinct; merely because the subject property is common in both the suits is no ground by itself to transfer the said proceedings for being heard in the same Court considering that both the proceedings are at different stage. No prejudice will be caused to the Petitioner if the suit is tried in different Courts.
9. The proceedings before the Senior Civil Judge as is apparent is an appeal whereas the proceedings pending before the Additional District Judge is the original suit proceedings.
10. Accordingly, the present petition is dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 17, 2023/rhc/asb

[Click here to check corrigendum, if any](#)