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

+ C.R.P. 16/2023, CM APPL. 2566/2023 (stay)

PAWAN KUMAR GUPTA & ANR.Petitioners

Through: Mr. Kamlesh Anand, Advocate.

versus

AJAY KUMAR GUPTA & ORS.Respondents

Through: Mr. Rahul Malhotra, Mr. Chirag Goyal,
Advocates for R1.
Mr. Manav Bhalla, Advocate for
Respondent no. 2 and 3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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06.12.2024

C.R.P. 16/2023

1. The Civil Revision Petition under Section 115 of the *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed on behalf of the Petitioners against the Order dated 25.11.2022 *vide* which the Application under Order VII Rule 11 CPC of the Revisionist (Defendant No. 1), has been dismissed.

2. The Revisionist had sought rejection of the *Suit for Partition* filed by the Respondent No. 1 (Plaintiff), in respect of the HUF Properties. The *first ground* taken for rejection of the Suit, are that the father had died in the year 1999 and the Limitation for seeking Partition commenced from 1999. The Suit was filed in the year 2019 which is beyond the period of three years and is patently *barred by limitation*. The *Second ground* is that the Suit has not been valued properly and the requisite court fees has also not been paid. The third ground is that the Suit is liable to be stayed under *Section 10 CPC* as another Suit in respect of the immovable property, had been filed by the Plaintiff, in the District Court of Faridabad, Haryana though, the same stands withdrawn.

3. **Submissions heard.**



4. The first ground for Rejection of Suit is that it is barred by Limitation. Insofar as, the limitation is concerned, it is erroneously argued that the cause of action arises from the date of demise of the father. The cause of action for Partition is a continuing cause of action subsisting in all the coparceners. The cause of action actually arises on the date when any of the coparcener first expresses the intention of the Partition. In the present case, the Plaintiff first made a request for Partition on 15.09.2017 and the Suit has been filed in 25.09.2019 which is within the period of three years. The *first ground* of limitation is, therefore, not tenable.
5. The *second ground* is that the Suit has not been properly valued but no further details have been given. The learned Tribunal has rightly rejected this ground.
6. The *third ground* is that the Suit is liable to be stayed under Section 10 CPC. Though the relief under Section 10 CPC is distinct to Order VII Rule 11 CPC but since it has been taken, it is being considered *herein*. As per the submission of the Revisionist himself, the earlier Suit for Partition of immovable properties that was filed separately in Faridabad Court, already stands withdrawn with liberty; therefore, there is no question of stay of the present Suit for Partition, which pertains only to movable properties.
7. Learned counsel for the Revisionist further submits that the Suit is barred under Order 2 Rule 2 CPC. However, as clarified on behalf of the Respondents, the Suit filed before the Faridabad Court has been withdrawn with liberty to file afresh. In any case, there is no finding in respect of this aspect in the Application under Order VII Rule 11 CPC and the rejection has not been sought on this ground.
8. The learned Court had rightly dismissed the Application under Order VII Rule 11 CPC. There is no merit in the Revision Petition, which is hereby dismissed.
9. The Revision Petition is disposed of accordingly along with the pending Application.

NEENA BANSAL KRISHNA, J

DECEMBER 6, 2024/RS