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

+ **FAO(OS) 46/2024 & CM APPLs. 21158-59/2024**

SH. RAJEEV GUPTA

..... Appellant

Through: **Mr. D. V. Khatri, Mr. Anurag Verma
and Mr. Jitesh, Advocates**

versus

SMT. SARITA GARG & ORS.

..... Respondents

Through: **None**

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Date of Decision: 09th April, 2024.

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 21160/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 46/2024 & CM APPLs. 21158-59/2024

1. The present appeal filed under Section 10 of the Delhi High Court Act, 1966 impugns the judgment dated 13th February, 2024 passed in I.A. No. 17998/2023 in CS (OS) No. 95/2020 ('Impugned judgement'), filed by the Appellant under Order VII Rule 11 read with section 151 of Code of



Civil Procedure, 1908 ('CPC'), whereby the learned Single Judge of this Court dismissed the said application.

1.1. The Appellant is the original defendant no. 2 and Respondent No. 1 is the original plaintiff before the learned Single Judge.

1.2. The civil suit has been filed by the Respondent No. 1 for (i) Declaration and Cancellation of the registered Will dated 16th July, 2010 as illegal, null and void; (ii) for consequent relief of Partition with respect to property No. D-13, Block-D, Vivek Vihar, Delhi-110095 ('suit property'); (iii) rendition of accounts of all movable assets left behind by their mother i.e. late Smt. Sushila Gupta; and (iv) for permanent injunction restraining defendants therein from creating any third-party interest in the suit property.

1.3. The Appellant and the Respondents are siblings and the suit has been filed for partition of the estate of their mother late Smt. Sushila Gupta.

2. The Appellant filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the plaint was without any cause of action. The said application has been dismissed by the learned Single Judge vide the impugned judgment.

3. Learned counsel for the Appellant states that late Smt. Shushila Gupta executed the registered Will dated 16th July, 2010 bequeathing the suit property exclusively in favour of the Appellant and Respondent No. 2 to the knowledge of the other siblings. He states that Respondent Nos. 1, 3 and 4 had full knowledge about the execution of the registered Will dated 16th July, 2010. He states that Appellant and Respondent No. 2 have acquired ownership rights in the suit property under the said Will by operation of law. He states that the Will dated 16th July, 2010 is a validly executed registered document and unless the said Will is declared to be null and void by a Court



of law, the relief of partition cannot be claimed/maintained by the Respondent No. 1. He states that the civil suit seeking the relief of partition is therefore not maintainable presently during the subsistence of the registered Will dated 16th July, 2010. He states that therefore, the application was filed under Order VII Rule 11 CPC for rejection of the plaint on the plea that it is without cause of action and at this stage, the relief for partition is not maintainable. He states that in law, the relief for partition is not a consequential relief but a separate and different relief available to a party.

4. We have heard the learned counsel for the Appellant and perused the record.

5. The civil suit has been filed by the Respondent No. 1 seeking partition of the estate of her mother late Smt. Sushila Gupta, which includes the suit property on the plea of intestate succession as per the Hindu Succession Act, 1956. It is stated in the plaint that Respondent No. 1 learnt about the existence of the Will dated 16th July, 2010 upon receipt of reply dated 02nd May, 2019, from the Respondent No. 2, to the legal notice dated 15th April, 2019. It is stated that the Respondent No. 1 made enquiries from the office of the concerned Sub-Registrar about the existence the said Will dated 16th July, 2010 and received confirmation of its registration. It is stated in the plaint that the said Will is a sham and bogus document, for the reasons set out therein. In these circumstances, the Respondent No. 1 firstly, sought a declaration that the said Will dated 16th July, 2010 is illegal, null and void; and secondly, sought the relief of partition of the estate on the plea of intestate succession.

6. Admittedly, the Appellant and Respondent No. 2 have not sought a probate of the Will dated 16th July, 2010 and therefore, the validity of the



said Will has not been pronounced upon by any Court of law. The said Will has been relied upon by Appellant and Respondent No. 2 in their defence to oppose the Respondent No. 1's claim of partition of the estate of late Smt. Sushila Gupta, which is based on intestate succession. To succeed in their defence, the Appellant and Respondent No. 2 will [now necessarily] have to prove the validity of the Will dated 16th July, 2010 in the suit proceedings, in accordance with law. The onus of proving the validity of the Will lies on the party relying upon it and if the Appellant and Respondent No. 2 fail to prove the validity of the Will, the estate of late Smt. Sushila Gupta will devolve by intestate succession on her legal heirs including Respondent No. 1 herein.

7. In these facts, the frame of the underlying suit by Respondent No. 1 is correct and by seeking the prayer of declaration and cancellation of the Will dated 16th July, 2010 in the plaint, Respondent No. 1 is not precluded from seeking the relief of partition as a consequent prayer. As noted above, it is a matter of law that if the Will dated 16th July, 2010 is held to be invalid, the sequitur is that Respondent No. 1 will become entitled to the relief of partition.

8. The Respondent No. 1 being the Class I legal heir of late Smt. Sushila Gupta and therefore in accordance with the Hindu Succession Act, 1956 has a cause of action for seeking partition of the estate of the deceased in accordance with law and therefore, the plea of the Appellant that the plaint is without cause of action is misconceived. The Respondent No. 1 does not admit the validity of the Will dated 16th July, 2010 and prayer in the suit seeking a declaration that the said Will is invalid does not operate as a bar to maintain the suit for partition.

9. Accordingly, we do not find any infirmity in the order of the learned



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Single Judge and therefore, the present appeal is without any merits and is hereby dismissed along with applications with cost of Rs. 15,000/- to the Appellant.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 9, 2024/hp/ms

Signature Not Verified

Digitally Signed
By: Rashmi Dabas
Signing Date: 10.04.2024
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