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

% *Date of decision: 05.02.2024*

+ **LPA 503/2022 and CM APPL. 38224/2022**

ANITA JAIN AND ORS

..... Appellants

Through: Mr Ashish Aggarwal with Mr Vedit
Garg, Advocates.

versus

ANIL JAIN AND ORS

..... Respondents

Through: Ms Anjali Sharma with Mr Sonu K.
Sagar, Ms Ragini Vinaik, Ms
Kanishka Sharma and Mr
Thanglunkim, Advocates for
respondent no.1.
Mr Rajeev Mishra with Mr Sanand
Ramakrishnan, Advocates for
respondent nos.2 and 3.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal is directed against the impugned order dated 07.07.2022 passed by the learned Single Judge.
2. *Via* the impugned order, the learned Single Judge has dismissed the application filed by the appellants under Order I Rule 10 of the Code of Civil Procedure, 1908 [in short, "CPC"].
3. To be noted, appellant no.1 is the daughter of late Justice J.D. Jain



while appellant nos.2 and 3 are the sons of late Justice Aruna Suresh. Late Justice Aruna Suresh was also the daughter of late Justice J.D. Jain. The respondents are the brothers of appellant no. 1 and late Justice Aruna Suresh.

4. Concededly, the subject property is described as Plot No.43/1-D, Rajpur Road, Civil Lines, Delhi, admeasuring 357 sq.yds. [hereafter referred to as “the subject property”].

5. The appellants are claiming a right in the subject property which, admittedly, since 1990 has been in possession of the respondents.

6. We are told that respondent no.1 passed away on 19.09.2022. Justice J.D. Jain expired in 2009.

7. The appellants’ case, for being arrayed as a party to the suit action, is pivoted on the insertion of Section 6 in the Hindu Succession Act, 1956 [in short, “1956 Act”]. Section 6 was inserted in the 1956 Act on 09.09.2005.

8. The appellants, based upon the said provision and the judgment of the Supreme Court rendered in *Vinita Sharma v. Rakesh Sharma*, (2020) 9 SCC 1, claim that they are proper and necessary parties in the pending suit action, instituted for partition of the subject property.

9. It is not disputed before us that the respondents assert that the subject property stands already partitioned amongst them. In support of this plea, reliance is placed on the wealth return filed in 1990 with the concerned Wealth Tax Officer. Besides this, the respondents also rely upon a letter dated 14.01.1991 addressed by the late Justice J.D. Jain to the Wealth Tax Officer.

10. Ms Anjali Sharma, learned counsel, who appears on behalf of the legal representatives of respondent no.1, concedes that only photocopies of



the wealth tax return and the letter dated 14.01.1991 have been filed in the suit action.

11. What also emerged in the course of hearing is that a question mark has been raised by respondent nos.2 and 3 with regard to the marriage of the deceased Anil Jain with one Ms Monika Jain. It was alleged by respondent nos.2 and 3 that Monika Jain was the deceased Anil Jain's cousin, and therefore the children born from the wedlock would have, perhaps, no right in the subject property.

12. We may note that a chamber appeal was preferred on this aspect, against the order of the learned Joint Registrar dated 03.03.2023, before a coordinate bench, which was dismissed as withdrawn on 09.08.2023, with liberty to raise legal submissions at an appropriate stage

13. A perusal of the impugned order shows that what has been put against the appellants is the delay in approaching the court for being arrayed as a party.

14. Mr Ashish Aggarwal, learned counsel, who appears on behalf of the appellants, says that since the main action i.e., the partition suit is ongoing, the delay in approaching the court with an application under Order I Rule 10 of the CPC cannot have much bearing, if otherwise the appellants are entitled to a share in the subject property.

15. It is also pointed out that at this juncture, pleadings in the suit are complete and admission/denial of documents is yet to take place.

16. Given the aforesaid position, we are of the view that the best way forward would be to array the appellants as parties to the suit action *albeit* without prejudice to the rights and contentions of the respondents. The respondents will be required to prove, amongst other things, that a partition



was affected *via* a legally admissible written document.

17. Although reliance is placed by the respondents on the documents, to which we have made a reference hereinabove, they would, at the very least, have to be proved, and that stage has not been reached as yet.

18. Accordingly, the impugned order is set aside.

19. Needless to add, since the effect of the order passed by us would be that the appellants will stand arrayed as parties in the suit action, they will be given opportunity by the learned Single Judge to file a written statement in the matter.

20. At this stage, Mr Aggarwal says that they would file the written statement within the next thirty (30) days.

20.1 The statement of Mr Aggarwal is taken on record.

20.2 The written statement, if filed within the timeline given above, will be taken on record by the learned Single Judge.

21. Ms Sharma says that she will file an amended memo of parties in the suit action.

21.1 Ms Sharma's statement is also taken on record.

22. The appeal is disposed of in the aforesaid terms. Pending applications are closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 5, 2024/tr