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

% *Date of decision: 05th August, 2024*

+ **FAO 14/2022 & CM APPL. 2307/2022**

SMT. PUSHPA DEVI VATS @ BABLIAppellant

Through: Ms. Gyan Mitra with Mr. Agraza,
Advocates.

versus

SMT RESHAM DEVI & ORS.Respondent

Through: Mr. Ashish with Mr. Chhavi Luthra
and Mr. Anmol Kapur, Advocate for
R-1, 3 and 4.

MR. Saurabh Dwivedi with Mr.
Gaurav Kumar, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court and has filed suit for partition and permanent injunction.
2. Along with the suit, petitioner had also filed an application under Order XXXIX Rule 1 and 2 read with Section 151 CPC, praying therein that the defendants be restrained from creating any third party interest in the suit properties, which according to her are ancestral in nature.
3. Vide impugned order dated 28.10.2021, the aforesaid application has been dismissed.
4. Though, it seems that when the arguments were advanced, the



defendant had raised objection that the property in question was not ancestral property and the suit was not maintainable, fact remains that learned Trial Court has dismissed the injunction application, merely, for the reason that if such application is allowed it would result in allowing the suit as such.

5. It is quite evident that the learned Trial Court has not given any specific observation in this regard, either way and the application has been dismissed simply on the premise that if such application is allowed, it would result in suit being allowed as such without any trial.

6. Learned counsel for the petitioner submits that properties in question were not self acquired and were ancestral and non-grant of injunction may render the suit infructuous.

7. Learned counsel for the respondent has countered the above and has also contended that the suit for partition is not maintainable and he has already moved an application seeking rejection of the plaint.

8. Be that as it may, since the decision is on different premise which is not sustainable, the order dated 28.10.2021 is hereby set aside with the direction that the learned Trial Court would hear both the parties afresh with respect to the above said injunction application.

9. Learned counsel for the respondent states that the matter is listed before the learned Trial Court on 20.08.2024 and assures that no third party interest with respect to the properties in question would be created till 20.08.2024.

10. It is clarified that this Court has not expressed any opinion with respect to the merits of the competing claims and it will be for the respective parties to



make requisite submissions before the learned Trial Court and after hearing the parties, the court would pass appropriate order in accordance with law.

11. The petition stands disposed of in the aforesaid terms.
12. Order *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

AUGUST 5, 2024/sw