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

+ C.R.P. 259/2024, CM APPL. 51209/2024 (stay)

TABASSUM

.....Petitioner

Through: Counsel for Petitioner (appearance
not given)

versus

NAVED SAYED

.....Respondent

Through: Mohd. Qamar Ali and Ms. Priyanka,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

29.11.2024

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C.R.P. 259/2024

1. The Revision Petition under Section 115 of the *Code of Civil Procedure, 1908* ('CPC' hereinafter) has been filed on behalf of the Petitioner against the Order dated 09.05.2024 *vide* which he Application under VII Rule 11 of CPC, has been dismissed.

2. *Learned counsel on behalf of the Revisionist* submits that the Respondent/Plaintiff had filed a Suit for *Declaration, Partition and Injunction* and other reliefs. According to the averments in the Plaint and also the documents filed on record, it is evident that though the partition has been sought for the entire Property, but only 50% was owned by his father and 50% by the step-mother. The Petitioner has no right to claim a Partition in respect of the 50% share of the Suit property, belonging to the Step Mother. *Secondly*, the Plaintiff has intentionally concealed the Sale Deed dated 24.05.2004 *vide* which the remaining half portion of the Father in the



Suit Property, has also been transferred to the Revisionist. *Thirdly*, he has sought the relief of Declaration that the entire property belonged to the father. The entire case is premised on the after being declared as an absolute owner. The suit for Partition is not maintainable since the documents reflect that the Father had sold his share and the Plaintiff has no right to claim any share in the suit property.

3. **Submissions heard.**

4. The Plaintiff/Respondent has filed a Suit for **Declaration, Partition and Injunction**. According to the averments made, the Revisionist/Defendant No. 1 was an Associate Professor at Jamia Millia Islamia. She got married to late Sh. Syed Mohd. Akhtar Naqi on 17.01.1993 and from their wedlock, Defendant No. 2, Ms. Jainab Naqi was born on 27.11.1994. Mrs. Tabassum and her Late husband Sh. Syed Mohd. Akhtar Naqi acquired the Suit Property Flat No. 16, on ground floor + duplex, Cat-III situated in Pocket-J, SARITA Vihar, New Delhi-110044 *vide* Registered Agreement to Sell dated 24.05.2004 and both had equal 50% share in the Suit Property.

5. Sometime in the year 2010, the Professor Mohd. Akhtar Naqi sold his share in favour of the Defendant No. 1/Ms. Tabassum/Revisionist *vide* duly registered Deed for consideration of Rs.7,28,000/-. The revisionist thus, became the absolute owner of the Suit Property and has been resided therein since 2004 till date.

6. Reference has been made to Section 2 of The Muslim Personal Law (Shariat) Application Act, 1937 ('Shariat Act' *hereinafter*) and Rule 84 of the Mulla's Principles of Mahomedan Law wherein it is stated that "*Step-children do not inherit from step-parents nor do step-parents inherit from*



step-children.” Reliance has also been placed on *Mukhtar Ahmad & Ors. v. Mahmudi Khatoon & Ors.* (2010) 3 JCR 211 (JHA).

7. It is submitted that since the Revisionist is the step-mother and the absolute owner, the Suit for Partition is not maintainable.

8. As per the submissions made in the Revision Petition itself, the *main ground* taken for challenge to the **relief of Declaration** is that no declaration can be sought in respect of the deceased father. However, this arguments is not tenable since Declaration is sought not *vis-a-vis* a dead person but *vis-a-vis* the Suit Property. *Secondly*, the Revisionist herself has claimed that she has acquired the half share of the father of Defendant No.2 through a Sale Deed but she herself submits that the Sale Deed is not on record and has been disclosed by her, in her Written Statement.

9. The learned Tribunal has rightly observed that the grounds on which rejection under Order VII Rule 11 CPC is sought, is on the basis of the documents which had been produced by the Revisionist along with the Written Statement. While considering the Application under Order VII Rule 11 CPC, only the averments made in the Plaint, are to be considered. Rest all is a defence, which is required to be proved in accordance with law.

10. There is no infirmity in the impugned Order dated 09.05.2024 and the Revision Petition is hereby dismissed.

11. The Revision Petition is disposed of accordingly along with the pending Application.

NEENA BANSAL KRISHNA, J

NOVEMBER 29, 2024/RS