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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 25th October, 2024***

+ **CM(M) 17/2024 & CM APPL. 63332/2024**

ANIL KUMAR JAIN & ANR.

.....Petitioner

Through: Mr. Aditya Chauhan with Mr. Rishabh Jain, Ms. Radhika Bansal and Ms. Divyanshu Rathi, Advocates.

versus

NARESH JAIN

.....Respondent

Through: Mr. Pragya Jain with Ms. Ritka Mehta, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. The application seeking early hearing has been filed by respondent (plaintiff before the learned Trial Court).
2. Learned counsel for petitioner is also present in Court and with the consent of both the sides, the date is pre-poned and the matter is heard today itself.
3. The issue raised in the present petition is very short.
4. The plaintiff had filed a suit for partition and following issues were framed by the learned Trial Court:-

“1. Whether the suit property was partitioned between Sh. Kasturi Lal Jain and Sh. Joginder Lal Jain at any point of time and if so, what were the shares divided amongst them? (OPD)

2. Whether the plaintiff is entitled to decree of partition as claimed? (OPP)

3. Whether the plaintiff is entitled to decree of mesne profits as claimed? (OPP)

4. Relief.”

5. However, after framing of the issues, the learned Trial Court asked the defendant to begin with the evidence first.



6. Needless to say, the plaintiff has claimed partition and for all practical purposes, the initial onus is on him to adduce evidence and prove his case and even if, in view of stand taken by the defendant, in his written statement, the onus of issue No.1 was put upon the defendant, that would not mean that the petitioner is relieved of his obligation to begin with the evidence.

7. Order XVIII Rule 1 CPC is very clear on said aspect and provided as under:-

“1. Right to begin.—The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.”

8. There is nothing which may indicate any admission of above kind.

9. During course of the arguments, the learned counsel for respondent/plaintiff stated that he would have no objection if plaintiff is rather directed to begin evidence.

10. In view of the above, the present petition is disposed of with the direction that the plaintiff would begin with his evidence and once his evidence is over, the defendant would lead his evidence.

11. Both the sides would give due cooperation and assistance to learned Trial Court, so that the above said suit reaches its logical end as expeditiously as possible.

12. The petition stands disposed of in the above said terms.

(MANOJ JAIN)
JUDGE

OCTOBER 25, 2024/sw