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

% ***Date of decision: 22nd October, 2024***

+ **CM(M) 3682/2024 & CM APPL. 62120-62122/2024**

VINOD KUMAR ARORAPetitioner

Through: **Mr. Azam Ansari, Advocate.**

versus

**SURENDER KUMAR ARORA (SINCE DECEASED) THROUGH
HIS LRS. AND ORS.**Respondents

Through: **Mr. Mohammad Mustafa, Advocate.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner is defendant No.4 before the learned Trial Court.
2. The plaintiff before learned Trial Court was Smt. Ranjana Arora, who had filed a suit for partition and rendition of accounts.
3. Learned Trial Court has already passed a *preliminary decree* and has declared that the plaintiff, LRs of deceased defendant No.2, defendant No.3 and defendant No.4 are entitled to one-fourth share each in the property in question which is situated at Kirti Nagar, Delhi. Simultaneously, defendant No.4 has also been directed to give a sum of Rs.87,917.27 to the other parties along with interest @ 6% per annum to be reckoned from 13.06.1995 till its realization. There is also a direction to pay the requisite court fee on such respective share of the parties.
4. The grievance raised in the present petition is very short and



precise.

5. It is contended by the petitioner (defendant No.4) that he is in the process of challenging the aforesaid judgment of *preliminary decree* and the limitation period prescribed for filing the same is though of 90 days, he is making best efforts to ensure that such appeal is filed as expeditiously as possible. He, therefore, made a prayer before learned Trial Court that at least, till the expiry of such period of appeal, he may not be compelled to file an affidavit suggesting ways and means of partition.

6. However, such request has been declined.

7. It seems that learned Trial Court declined the same while keeping in mind the fact that it was a very old case and the directions had been received from Superior Courts for expeditious disposal of the above said case.

8. Undoubtedly, the aforesaid efforts and enthusiasm shown by learned Trial Court by passing a preliminary decree is commendable but, at the same time, learned Trial Court should not have insisted for immediate submission of affidavits for exploring ways and means of partition, more so, when the party to the above said suit has clearly indicated that it is in the process of filing an appeal.

9. Interestingly, learned counsel for the plaintiff (respondent No.3) herein has also appeared along with respondent No.3 and he also states that even the plaintiff would be challenging the above said preliminary decree.

10. This Court has gone through the impugned order dated 14.10.2024 whereby learned Trial Court has observed that in case the



affidavits are not filed by plaintiff and defendant No.4 within one week, it would be presumed that they do not want to get the suit property partitioned by *metes and bounds* and that there is no possibility of partition by *metes and bounds*.

11. In view of the above said stand taken by the petitioner herein as well as respondent No.3 (plaintiff), the present petition is disposed of with the direction to learned Trial Court to not insist for any further action in the matter for a period of two months from today as it has been undertaken by both the sides that during the above said period, they would file appeal.

12. However, once such period of two months is over, learned Trial Court would be at liberty to proceed further with the matter in accordance with law, while also keeping in mind any order to be received in this regard from the learned Appellate Court.

13. The petition stands disposed of accordingly.

(MANOJ JAIN)
JUDGE

OCTOBER 22, 2024
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