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

+ **CS(OS) 121/2021 & I.A. 4948/2021**

SMT GAYTRI DEVI

.....Plaintiff

Through: **Mr.Anand Yadav, Adv.**

versus

SMT. SONIA

.....Defendant

Through: **Mr.V.P. Rana and Ms.Bhawna, Adv.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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17.01.2025

1. Heard learned counsel appearing on behalf of the parties on an application bearing no. *I.A. 4948/2021* by the defendant under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (CPC).
2. The Court finds that an unequivocal statement has been made by the defendant in the written statement, wherein, she asserts that she does not propose to create any third-party rights in the suit property. Rather, the defendant has instituted a Civil Suit seeking partition, which is stated to be pending before the Court of competent jurisdiction.
3. *Mr. Anand Yadav*, learned counsel appearing on behalf of the plaintiff, on the other hand, submits that he has reasonable apprehension that the defendant would create third-party rights. He also submits that the plaintiff has a preferential right to acquire the interest proposed to be transferred by the defendant in view of the provisions of Section 22 of the Hindi Succession Act, 1956 (the 'Act').
4. The Court notes the provisions of Section 22 of the Act, which confers a preferential right upon legal heirs to acquire property that is being



transferred by a co-heir. Section 22 of the Act mandates that if an heir intends to transfer or sell their interest in the property, other heirs within the same class have the right of first refusal to purchase it. The preferential right is meant to protect the interests of co-heirs, preventing the dissipation of the property to outsiders without first offering it to those entitled under the law.

5. During the course of the hearing, *Mr. V.P. Rana*, learned counsel appearing on behalf of the defendant, again reiterates the stand taken in the written statement and submits that there is no reason to believe that the defendant, at this stage, would create any third-party interest.

6. The Court takes note of the statement made by the defendant and acknowledges that, at present, there is no intention to create third-party rights. However, in light of the provisions of Section 22 of the Act and the law laid down in the case of *Ganesh Chandra Pradhan v. Rukmani Mohanty*,¹ the plaintiff is entitled to re-agitate the issue if there is a fresh cause of action or reasonable apprehension regarding the creation of third-party rights in the future. As on date, no cause survives to continue the instant suit.

7. Liberty is granted to the plaintiff to institute a fresh Civil Suit, in case the necessity arises. However, an equitable set-off of the Court fee is permitted to the extent of the Court fee already paid by the plaintiff.

8. With the aforesaid observations, at this stage, the instant Civil Suit, along with the pending application, stands disposed of.

PURUSHAINDR KUMAR KAURAV, J
JANUARY 17, 2025/MJ/MJO

¹ 1970 SCC Online Ori 65