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

% **Date of decision: 6th March, 2025**

+ **FAO 53/2025 & CM APPL. 13681/2025**

ASHOK KUMARAppellant

Through: **Mr. Gurdeep Singh, Adv.**

versus

KRISHAN KUMAR & ORS.Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 13682/2025 – EXMP.

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

FAO 53/2025 & CM APPL. 13681/2025

3. The appellant, arraigned as defendant No.1 in a suit for partition filed by the respondent No.1/plaintiff, has preferred the present appeal under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 [“CPC”], assailing the impugned order dated 01.02.2025 passed by the learned District Judge-07, Central District, Tis Hazari Courts, Delhi [“trial Court”]. By the said order, the learned trial Court dismissed the applications of the appellant, one for placing on record documents regarding the current market value of the suit property and another under Order XVIII Rule 17 of the CPC for the re-calling of respondent No.1/plaintiff to afford the appellant an opportunity to cross-examine him.



4. No one appeared for the respondent No.1/plaintiff when the matter was called.

5. Having heard the learned counsel for the appellant/defendant No.1 and on perusal of the record, this Court finds no hesitation in holding that the present appeal is bereft of any merits. In the suit for partition, the opportunity to cross-examine respondent No.1/plaintiff, who was examined as PW-1, was closed *vide* order dated 13.02.2017. The sole contention of the appellant/defendant No.1 is that he was unable to pursue the matter due to the demise of his 43 years old son after a prolonged illness of 8 years on 14.04.2020. Consequently, the appellant's right to lead evidence was closed *vide* order dated 28.04.2022.

6. Although the power to re-call and examine a witness under Order XVIII Rule 17 of the CPC is discretionary, the party seeking such relief must establish sufficient and justifiable grounds for recalling a witness for cross-examination. The appellant/defendant No.1 has failed to demonstrate any such grounds to invoke the aforesaid provision.

7. Incidentally, the learned trial Court recorded that, pursuant to an application under Order XVIII Rules 1 and 2 of the CPC filed on behalf of defendants No.1 and 2, an additional opportunity was granted to them to cross-examine PW-1 *vide* order dated 05.12.2017. However, they again failed to do so, leading to the closure of their right to further cross-examine PW-1 by order dated 04.08.2018. Thereafter, another application was moved under Order XVIII Rule 17 of the CPC, which was partly allowed, permitting cross-examination



of PW-2 and PW-3, subject to cost of Rs. 5,000/-, but no opportunity was granted to re-call PW-1. The said orders have attained finality and cannot be assailed.

8. Insofar as the second application of the appellant/defendant No.1 is concerned, the pecuniary jurisdiction of the learned trial Court has been challenged based on the current valuation report of the suit property, bearing No. B-14, Surya Nagar, Ghaziabad, Uttar Pradesh, which is claimed to be valued at Rs. 2.55 crores at the time of filing the suit in the year 2006. The learned trial Court has rightly observed that the current value of the property is irrelevant, as the respondent No. 1/plaintiff, in a suit for partition asserting an existing legal right, title, or interest, has the discretion to value the suit, which remains under examination during the course of trial.

9. In view of the above, this Court finds that the learned trial Court has not committed any illegality, perversity, or it adopted an incorrect approach in law warranting interference.

10. At this stage, a request has been made noting that appellant/defendant No.1 is about 81 years old and has been burdened with costs of Rs. 50,000/- upon dismissal of the two applications. In the interest of justice, the costs are reduced to Rs. 30,000/-, to be deposited in equal shares with the Advocates' Welfare Fund and the Delhi Legal Services Authority, Central District, within 15 days from today.

11. Except for the aforesaid modification the present appeal stands dismissed.

12. The pending application also stands disposed of.



13. A copy of this order be sent to the learned trial Court for information and records.

DHARMESH SHARMA, J.

MARCH 06, 2025/ *Sadiq*

Signature Not Verified

Digitally Signed By: PRADEEP
KUMAR VATS
Signing Date: 16/03/2025
20:27:00

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