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

+ **FAO 309/2023**

GARIMA DATTAAppellant

Through: Mr. Jai Ram Garg, Adv.
versus

JAGTAR SINGH DATTA AND ANRRespondents

Through: Mr. Aditya Jain and Mr.
Satyam Shivaach, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **24.03.2025**

1. This appeal has been preferred by the appellant under Order 43 Rule 1(R) of the Civil Procedure Code, 1908 [CPC], thereby seeking quashing/setting aside of the order dated 26.09.2023, passed by the learned ADJ North District, whereby her application under Order XXXIX Rule 1 and 2 CPC in a suit for partition filed by her, has been dismissed.

2. Having heard the learned counsels for the parties and on a perusal of the record, in a nutshell, it appears that the appellant/plaintiff has filed a suit bearing No. CS 383 /2023, initially claiming that she is the natural daughter of respondent No. 1 and Ms. Amita Datta, who has since expired. Respondent No. 2 is claimed to be her sister.

3. Learned counsel for the respondents has pointed out that when the certificate was produced from the natural mother namely Babita Sharma filed alongwith the written statement, to the effect that the appellant/plaintiff was never given in adoption to respondent No. 1 and deceased Amita Datta, the appellant has then claimed that there



were religious ceremonies performed contemplating giving and taking of her adoption.

4. In the aforesaid backdrop, learned Trial Court dismissed the application under Order 39 Rule 1 and 2 CPC holding as under:

“8. I have heard the rival submissions of the parties and perused the relevant record. In totality of the circumstances, it prima facie appears that there is no adoption in favour of plaintiff. Though, the name of defendant no.1 is mentioned in educational documents of the plaintiff as her father, it will at best show that plaintiff was living with defendant no.1 and Smt. Amita Datta. The marriage card and priest note will show that that plaintiff was living with Smt. Amita Datta but for the purposes of succession to properties of Smt. Amita Datta, it has to be prima facie be shown by the plaintiff that she was adopted by defendant no.1 and Smt. Amita Datta. Whether plaintiff shall be entitled to partition, possession and permanent injunction requires investigation and decision on merits. The argument by the Ld. Counsel for the plaintiff that no suit for declaration has been filed by the defendants for declaring documents in favour of plaintiff as null and void does not hold much water as it is for the plaintiff to prima facie show that she was duly adopted. No such prima facie evidence to the satisfaction of the court has been shown on record at this stage.

9. This court has considered probability of plaintiff success in the trial and the comparative strength of the cases of the respective parties before it. This Court is of the opinion, in the absence of the adoption deed or proof of giving and taking ceremony, no prima facie case has been established. in favour of the plaintiff. Second property has already been stated to have been sold during the lifetime of Smt. Amita Datta. In case, first property is sold the same will be subject to the rule of lis pendens as contained in section 52 of Transfer of Property Act, 1882.

10. The application u/o XXXIX Rule 1 and 2 CPC by the plaintiff is dismissed on account of absence of prima facie case in plaintiff's favour. However, nothing stated in the order shall affect the merits of the case. Needless to say, in case first property is transferred during the pendency of the case, rule of lis pendens shall apply.”

5. *Ex facie*, on a bare perusal of the aforesaid order, it is difficult to discern that there is any illegality, perversity or incorrect approach adopted by the learned Trial Court in deciding the application under



Order XXXIX Rule 1 and 2 CPC.

6. The appellant/plaintiff is woefully failing to present the *prima facie* case that she was ever adopted by the respondents. However, needless to say, the said findings given by the learned Trial Court are only *prima facie* view of the matter and it would be open for the parties to lead necessary evidence on the matters in issue during the course of trial.

7. Accordingly, the present appeal is hereby dismissed without prejudice to the rights and contentions of the parties.

8. Pending application(s), if any, also stand disposed of.

DHARMESH SHARMA, J.

MARCH 24, 2025/*gunn/Sa*