

**SUBHASH CHAND KAUSHIK & OTHERS.**

**VS.**

**THE REGISTRAR OF SOCIETY & OTHERS.**

**31.08.2022**

Present: Sh. Sandeep Kumar, Ld. Counsel for the plaintiffs with plaintiff no. 1 and 3 in person.

Sh. Hemant Gupta, Ld. Counsel for defendant no. 2 (through VC).

Ms. Utkarsha, Ld. Proxy Counsel for the defendant no. 4 and 5.

Sh. Promod Gupta, Ld. counsel for defendant no. 4 and 5 through VC).

Sh. Anshu Mahajan, Ld. Counsel for defendant no. 7, 9, 11, 13, 16, 18 to 20.

Defendant no.6(ex-parte vide order dated 24.03.2021).

Defendant no.8( ex-parte vide order dated 24.03.2021).

Defendant no.10(ex-parte vide order dated 24.03.2021).

Defendants no.14&15 ( ex-parte order dated 20.09.2012).

Defendants no.22 to 25 (ex-parte vide order dated 24.03.2021).

There is one pending application filed on behalf of defendant no. 4 and 5 for treating issue no. 8 and 9 as preliminarily issue. Reply/submission are filed on behalf of the plaintiff today. Copy supplied. During the course of arguments, it is stated by the counsel for the applicants that he wants to press this application in respect of issue no. 9 only and not in respect of issue no. 8. Submissions on the application heard.

Re-notify for orders during course of day.

**Shivali Sharma**

**Additional District Judge-03(West)**

**Tis Hazari Court/31.08.2022**

**At 03.30 PM**

Present:                   None.

1.                   Vide this order, I shall dispose off an application under Order 14 Rule (2) & (5) CPC filed by defendant no. 4 and 5 for treating issues no. 8 and 9 as preliminary issues. During the course of arguments, application has been withdrawn qua issue no. 8 i.e. the issue on the territorial jurisdiction of this court to try the present suit and it is submitted that the applicant do not wants to press the present application for treating issue no. 8 as a preliminary issue.
2.                   Arguments have already been heard in the morning. Record carefully perused.
3.                   The present suit has been filed in the year 2010 and pleadings could be completed and issues were framed only on 29.11.2021 ie. After 11 years of filing of the suit due to filing of various miscellaneous applications by the parties to the suit. There are 25 defendants in the present suit, out of which proceedings qua three defendants have been deleted while nine defendants are already ex-parte. All the other defendants are contesting the present suit. After framing of issues, the list of witnesses and affidavit of three of the plaintiff witnesses have already been filed on record and the matter is at the stage of recording of their evidence. At this stage, the present application has been filed on 22.07.2022 i.e. almost after eight months of framing of issues.
4.                   In the application under consideration, it is prayed that issue no. 9 regarding the proper valuation of present suit for the purposes of court fees and suit valuation be treated as a preliminary issue. It is stated that this issue is purely a question of law and does not require appreciation of any evidence. Accordingly, this issue should be treated as a preliminary issue and decided prior to recording of evidence of the parties.

5. The application also gives details of the manner in which the valuation of the suit is not proper, however, the said details are not important at this stage as merely the question whether issue no. 9 should be treated as preliminary issue or decided after appreciation of evidence is to be considered at the stage of deciding the present application. The sole reason prayed by Ld. Counsel for the applicants for treating this issue as a preliminary issue is that it does not require appreciation of evidence and it is a pure question of law. During the course of arguments, Ld. Counsel for applicants has relied upon the following decisions :-

*(i) Jagdish Singh Vs. Jasvinder Singh 2015 (1) RLR 687 (Delhi High Court),*

*(ii) Maharani Bagh Resident Welfare Association Vs. MCD 2012 (189) DLT 761,*

*(iii) Suhrid Singh Vs. Randhir Singh 2010 AIR SC 2807.*

6. It is again reiterated that all these judgments have also been relied upon to support the case of the applicants that the valuation of the suit done by plaintiff for the purposes of jurisdiction and court fees in the present suit is not proper, however, this question is not being decided by me while deciding the application under consideration.

7. On behalf of the plaintiff, written submissions have been filed wherein the application is vehemently opposed. It is stated that the present application is nothing but another attempt of the applicants to further delay the proceedings. Earlier also, on similar ground an application under Order VII Rule 11 CPC was filed by the defendants on 24.07.2010 which was dismissed by Ld. Predecessor of this court vide order dated 03.12.2016. The said order has attained finality as it was never challenged by the defendants and now again, the present application has been filed for treating issue no. 9 as a preliminary issue and again addressing similar arguments merely to delay the present matter. It is argued that the issue of court fees in the present matter is not a pure question of law and is rather a mixed question of law and facts which can be decided only after appreciation of evidence led by both the parties. The plaintiffs in the matter are already senior citizens and further delay

in the matter may cause prejudice to them as they might not be able to lead their evidence to support their case. In these circumstances, dismissal of the application be prayed with heavy cost.

8. I have heard the submissions as well as perused the previous application of the defendant under order VII Rule 11 CPC as well as order dated 03.12.2016 whereby the said application was dismissed. The dispute between the parties regarding proper valuation of the present suit has already been considered by Ld. Predecessor of this court in a preliminary manner (i.e. without leading of evidence) while passing order dated 03.12.2016. The arguments addressed by the defendants, regarding not paying advelorem court fees by the plaintiff on the reliefs sought was improper, have already been considered at length by Ld. Predecessor of this court. The court has also observed that the requisite court fees on the relief of rendition of accounts can be directed to be paid by the plaintiff in the event the findings are returned in respect of the said relief. Once, the concerns of the defendants regarding non-payment of proper court fees have already been considered by Ld. Predecessor of this court at a preliminary stage for deciding the application under Order VII Rule 11 CPC, I find no reason for reconsidering the said objections in a preliminary manner without leading of evidence by the parties. Considering the overall facts of the case and the order dated 03.12.2016 passed by Ld. Predecessor of this court, I am of the opinion that the issue of valuation of the present suit for the purposes of jurisdiction and court fees is not a pure question of law in the present suit and the same can be decided only after appreciation of evidence and not by mere arguments at this stage.

9. Even otherwise, this is a very old matter pertaining to the year 2010 and it would be appropriate that evidence in the matter is recorded at the earliest. In these circumstances, I find no merits in the application under consideration. The same is accordingly, dismissed. No orders as to cost.

10. Re-notify for PE on 21.09.2022.

It is made clear that no adjournment shall be given to any of the parties on any grounds whatsoever as the matter is very old pertaining to the year 2010.

**Shivali Sharma**

**Additional District Judge-03(West)**

**Tis Hazari Court/31.08.2022**