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

+ CS(OS) 354/2023 & I.A. 10804/2023, I.A. 16510/2023, I.A.
327/2024, I.A. 797/2024, O.A. 91/2024

SH. SUSHIL KUMAR & ORS.Plaintiffs
Through: Mr. Kunal Madan, Mr. Shyam Babu
and Mr. Mohit Gulati, Advocates

versus

VIJAY KUMAR GUPTA & ORS.Defendants
Through: Mr. M. A. Inayati and Mr. Furkan Ali
Mirza, Advocates for D-1 to D-4

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **09.09.2024**

O.A. 91/2024

1. This is an appeal filed by the appellants/defendants impugning the order dated 03.05.2024 passed by the learned Joint Registrar (J) whereby defendants right to file the written statement has been closed.
2. Learned counsel for the appellants/defendants states that the defendants instituted a civil suit titled as **Vijay Kumar Gupta & Ors Vs Sushil Kumar Gupta & Ors** [Civ DJ 271/2023] against the plaintiffs for partition with respect to the same property bearing no. D-29, Mansarover Garden, Ramesh Nagar, New Delhi-110015 ('suit property') before the District Court at Tis Hazari on 13.04.2023 and summons in the said suit were issued on 12.05.2023.



2.1. He states that in fact the plaintiff herein filed this suit subsequently on 26.05.2023 and summons were issued by this Court on 30.05.2023.

2.2. He states given the commonality of the reliefs sought by the parties in both the cases, the defendants herein filed I.A. 16510/2023 under Section 10 of the Code of Civil Procedure, 1908 ('CPC') for seeking stay of present proceedings.

2.3. He states that in the meantime, however, order for transfer has been passed and the suit pending before the District Court has since been transferred to this Court and is next listed before the learned Joint Registrar (J) on 12.12.2024.

2.4. He states that since this is a suit for partition, grave prejudice will be caused to the appellants/defendants if their written statement is not brought on record.

3. Learned counsel for the plaintiffs states that without prejudice to its rights and contentions on the merits of the dispute, in view of the filing of the previous suit by the defendants in District Court, plaintiffs have no objection if the appellant's written statement is taken on record, subject to payment to costs.

4. In view of the aforementioned facts, the appeal is hereby allowed and defendant nos. 1 to 4's written statement along with affidavits of admission/denial of documents filed vide diary no. 2220721/2024 is hereby taken on record. The defendants are directed to pay cost of Rs. 20,000/- to the plaintiff within 10 days from today.

5. It is made clear that if there is any default in payment of costs, this order shall stand recalled.



I.A. 16510/2023 (Application by defendant under Section 10 CPC for stay)

6. This is an application filed by the defendant seeking stay of the present suit in view of the pendency of the previously instituted suit before the District Court.

7. Learned counsel for the plaintiffs state that since both suits are now pending before this Court, the plaintiffs have no objection, if the said suit are heard and tried together.

8. In view of the transfer of the suit and submissions of the plaintiffs, learned counsel for the defendants states that the present application be disposed of binding the plaintiffs to the aforesaid statement.

9. It is hereby directed that the present suit and the suit received on transfer from the District Court will be heard and tried together.

10. With the aforesaid directions, the present application stands disposed of.

I.A. 327/2024 (for condonation of delay)

11. The present application already stands disposed of vide order dated 03.05.2024. Accordingly, the registry is directed to take note of the said fact and mark the application as disposed of in the e-folder and not show the same in the cause list.

I.A. 10804/2023 (under Order XXXIX Rule 1 & 2 CPC)

12. This is an application filed by the plaintiffs under Order XXXIX Rule 1 and 2 CPC seeking a restraint against defendant nos. 1, 2 and 4 from creating any third-party interest in the suit property during the pendency of this suit.



13. Learned counsel for the plaintiffs and defendants state that parties undertake that they will maintain status quo with respect to title and possession of the suit property until the final disposal of the suit.

14. The statement and undertaking of the parties is taken on record and they are bound down to the said statement and the captioned application stands disposed of.

CS(OS) 354/2023

15. The plaintiffs are directed to file their replication within a period of 4 weeks. The replication shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replication shall not be taken on record.

16. Learned counsels for the parties state that since they are family members, they would like to explore a possibility of mediation before the Samadhan – Delhi High Court Mediation and Conciliation Center, Delhi High Court, Shershah Road, New Delhi [‘Samadhan’].

17. Accordingly, parties are referred to Samadhan and directed to appear on **17.09.2024 at 03:00 p.m.**

18. List before the learned Joint Registrar (J) on 12.12.2024 for completion of pleadings as well as filing of the Joint Documents Schedule.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 9, 2024/mt/ms